

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of The Dayton :
Power and Light Company : Case No. 12-426-EL-SS0
for Approval of its :
Electric Security Plan. :

In the Matter of the :
Application of the Dayton :
Power and Light Company : Case No. 12-427-EL-ATA
for Approval of Revised :
Tariffs. :

In the Matter of the :
Application of the Dayton :
Power and Light Company : Case No. 12-428-EL-AAM
for Approval of Certain :
Accounting Authority. :

In the Matter of the :
Application of the Dayton :
Power and Light Company : Case No. 12-429-EL-WVR
for the Waiver of Certain :
Commission Rules. :

In the Matter of the :
Application of the Dayton : Case No. 12-672-EL-RDR
Power and Light Company :
to Establish Tariff Riders:

- - -

PROCEEDINGS

before Mr. Gregory A. Price and Mr. Bryce A.
McKenney, Hearing Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-C,
Columbus, Ohio, called at 9:00 a.m. on Thursday,
March 28, 2013.

VOLUME IX

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1 Thursday Morning Session,
2 March 28, 2013.

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4 EXAMINER PRICE: Good morning.

5 The Public Utilities Commission has set
6 for hearing at this time and place Case No.
7 12-246-EL-SSO being in the Matter of the Application
8 of The Dayton Power & Light Company for Approval of
9 its Standard Service Offer and Related Matters.

10 My name is Gregory Price, with me is
11 Bryce McKenney, we are the Attorney Examiners
12 assigned to preside over today's hearing.

13 We have a couple of preliminary issues
14 before we take our first witness.

15 Mr. Hayden.

16 MR. HAYDEN: Thank you, your Honor. FES
17 previously identified the 2010 long-term forecast
18 report, which was not admitted into the record, as
19 FES Exhibit 14. We would ask that be identified as
20 FES Exhibit 13B.

21 EXAMINER PRICE: It will be so marked.

22 (EXHIBIT REMARKED FOR IDENTIFICATION.)

23 EXAMINER PRICE: Mr. Margard.

24 MR. MARGARD: Your Honor, Staff Witness
25 Rodney Windle is prepared to testify, but the parties

1 have indicated to us that they do not have any
2 questions for him on cross-examination. We have
3 prepared and distributed an errata sheet to his
4 testimony, which the parties had an opportunity to
5 review; none have voiced any interest in examining
6 him and all have agreed to stipulate to the admission
7 of his testimony.

8 I have marked Mr. Windle's prefiled
9 testimony as Staff Exhibit No. 11 and I have marked
10 the errata sheets, which consists of three pages,
11 page 10 of his testimony filed, page 10 of his
12 testimony in a redlined version, and page 10 of his
13 testimony as revised as Staff Exhibit No. 12, and I
14 would respectfully request that those exhibits --
15 move for their admission.

16 EXAMINER PRICE: Any objection to the
17 admission of Staff Exhibits 11 and 12?

18 MR. FARUKI: No, your Honor.

19 EXAMINER PRICE: Okay, those exhibits
20 will be admitted.

21 (EXHIBITS MARKED/ADMITTED INTO EVIDENCE.)

22 EXAMINER PRICE: At this time we will
23 take up the motion to strike which was filed -- was
24 this filed yesterday, Mr. Hayden?

25 MR. HAYDEN: I'm sorry, your Honor?

1 EXAMINER PRICE: Was the motion to strike
2 filed yesterday?

3 MR. HAYDEN: Yes, sir.

4 EXAMINER PRICE: At this time we'll take
5 up the motion of several intervenors to strike
6 certain portions of Ms. Seger-Lawson's testimony.
7 The company has agreed rather than filing a written
8 memo to address this motion through oral argument,
9 so, Mr. Sharkey, please proceed.

10 MR. SHARKEY: Yes, your Honor, thank you.

11 The motion seeks to strike five separate
12 questions and answers in Ms. Seger-Lawson's rebuttal
13 testimony and I'm going to go through the individual
14 questions and answers and identify for you the
15 testimony that Ms. Seger-Lawson's rebuttal testimony
16 rebuts.

17 I would start, your Honor, with the
18 question that is on line 6 of page 1 of her
19 testimony, and to give you a preview, I'm going to
20 demonstrate to you that that testimony specifically
21 rebuts the testimony of four separate witnesses, and
22 I'm also going to demonstrate that that testimony
23 supplies the factual predicate for the next two sets
24 of questions and answers which also specifically
25 rebut various pieces. So I'm going to argue that

1 this piece of testimony is relevant and admissible as
2 rebuttal testimony for three separate independent
3 reasons, your Honors.

4 EXAMINER PRICE: Okay.

5 MR. SHARKEY: Initially, your Honor, that
6 piece of testimony demonstrates that DP&L's had a
7 long history of providing generation service at
8 market rates -- I'm sorry, at prices that were below
9 market rates. That testimony is responsive initially
10 to the testimony of OEG Witness Lane Kollen, your
11 Honor.

12 Mr. Kollen, on page 14 of his prefiled
13 testimony, contains a chart that shows DP&L's
14 historic returns on equity, your Honor, starting in
15 the year 2001 going through the year 2012
16 demonstrating that in many years DP&L, over that
17 period, had an ROE in the neighborhood of 20 percent.

18 Then, your Honor, on page 16 of
19 Mr. Kollen's testimony he makes an argument, and I'll
20 read it to you, he says "In addition to the statutory
21 rights and obligations of the Company and customers
22 over this 17-year historic and projected period, this
23 is a matter of ratemaking equity. The Company was
24 allowed to retain its excessive earnings over the
25 last 12 years. It benefited by \$1.244 billion. It

1 should not be allowed now to recover its projections
2 of inadequate earnings over the next five years. The
3 Company's position is clearly asymmetrical and
4 amounts to the best of all worlds for it and the
5 worse of all worlds for its customers," close quote.

6 Your Honor, Ms. Seger-Lawson's testimony
7 demonstrates that DP&L's rates over the period
8 described in Mr. Kollen's testimony were, in fact,
9 below market rates and, thus, rebuts his equitable
10 argument that the Commission should consider DP&L's
11 historic past earnings in evaluating DP&L's request
12 for an SSR and a switching tracker in the future.

13 Your Honor, Joe Bowser also contains a
14 similar argument in his testimony, he has a chart on,
15 it's JGB Exhibit 4 that shows DP&L's historic rates
16 of return, his numbers in that chart are comparable
17 to the ones that were in Mr. Kollen's chart that I
18 just mentioned.

19 And then on page 13 of his testimony
20 starting on line 1 he has an argument for the years
21 2001 through 2011 the unweighted average annual ROE
22 of DP&L was 19.4 percent, which is substantially
23 above the ROE range of 7.7 to 10.4 percent that DP&L
24 Witness Chambers testifies is reasonable.

25 He goes on to say, I'm skipping a little

1 bit, those rates also indicate a lack of symmetry in
2 DP&L's current financial integrity claim.

3 In effect, DP&L's claiming that it is
4 entitled both to the opportunity to earn very high
5 ROEs on a company basis and to protection against low
6 total company ROEs related to competitive generation
7 and, it goes on.

8 Again, your Honor, they're making an
9 argument that DP&L's historic pricing and historic
10 rates were unreasonable. Ms. Seger-Lawson's
11 testimony, again, directly rebuts an argument that
12 DP&L's historic rates were unreasonable.

13 Your Honor, in addition, OCC Witness
14 Daniel Duann has very similar testimony. Again, he
15 has another chart in his, I'm looking at page 43 of
16 OCC Witness Duann's testimony. He has a chart, his
17 chart goes from 2004 to 2010, but he again sets forth
18 the ROEs that DP&L earned over the period and he says
19 in, starting on line 4, "The excellent financial
20 performance of DP&L over the last eight years
21 since" --

22 MS. YOST: I'm sorry, what page are you
23 on, line 4?

24 MR. SHARKEY: Page 43, line 4.

25 He says "The excellent financial

1 performance of DP&L over the last eight years since
2 2004 provides a strong argument that DP&L should not
3 be given any additional rate increase such as the
4 SSR."Again, Ms. Seger-Lawson's testimony is directly
5 responsive to and rebuts that argument.

6 Finally, your Honor, OCC -- I'm sorry,
7 not OCC, Kroger Witness Kevin Higgins on page 9 of
8 his testimony says, I'm quoting from line 15, "...the
9 Commission should also give weight to the fact that
10 the SSO rates from which customers have been fleeing
11 were negotiated by DP&L in a stipulation that
12 exempted DP&L in a Significantly Excessive Earnings
13 test."

14 Again, your Honor, it's responsive to an
15 assertion by Mr. Higgins that DP&L's historic rates
16 were unreasonably high.

17 So, your Honor, I believe that the
18 testimony of Ms. Seger-Lawson is directly responsible
19 to the testimony of those four witnesses that DP&L's
20 historic rates are unreasonably high and the
21 Commission, thus, should deny DP&L's request for the
22 SSR and switching tracker on a going-forward basis.

23 I'm going to move to the second Q and A
24 which I'm going to show is both directly responsive
25 and that the first Q and A is supportive of the

1 testimony there, but I don't know if you had any
2 questions, your Honor, as to the first set of
3 arguments.

4 EXAMINER PRICE: No.

5 MR. SHARKEY: Okay.

6 Your Honors, the second Q and A in
7 Ms. Seger-Lawson's testimony beginning on page 3,
8 line 1 is, in essence, an equitable argument that the
9 Commission should consider DP&L's historic practices
10 of providing below market generation rates as the
11 Commission evaluates DP&L's request for an SSR and a
12 switching tracker.

13 As your Honors know, many witnesses in
14 this case have asserted that the Commission should
15 deny DP&L's request for an SSR or a switching tracker
16 including FES Witness Lesser, FES Witness Noewer,
17 IEU Witness Hess, IEU Witness Murray, IEU Witness
18 Bowser, OCC Witness Duann, OEG Witness Kollen,
19 FEA Witness Gorman, IGS Witness White, Wal-Mart
20 Witness Chriss, Kroger Witness Higgins, and Staff
21 Witness Choueiki.

22 Ms. Seger-Lawson's testimony there that
23 the testimony should consider DP&L's past practice of
24 providing below market generation rates is responsive
25 to the arguments made by all of those people that the

1 Commission should either reject or limit DP&L's
2 request for a switching tracker and a service
3 stability rider.

4 In addition, your Honor, as I mentioned,
5 Dona Seger-Lawson's question and answer starting on
6 page 1 of her testimony provides the necessary
7 factual predicate that underlies her question and
8 answer on page 3, so the question and answer on
9 page 1 is additionally rebuttal testimony and should
10 not be stricken for that reason.

11 Then, your Honor, I'm going to move to
12 the next question on page 3, but if you had any
13 questions, this would be a good time to pause for a
14 moment.

15 EXAMINER PRICE: We're not shy about
16 asking questions, whether it's a good time or not.

17 MR. SHARKEY: That I've learned, your
18 Honors.

19 Then at the bottom of page 3, your Honor,
20 Ms. Seger-Lawson addresses the fact that The Dayton
21 Power & Light Company owned its generation assets
22 over the relevant period and The Dayton Power & Light
23 Company would not have been able to provide below
24 market generation rates but for the fact that it
25 owned those generation assets, so that its ownership

1 of the generation assets over the last ten-plus years
2 has, in fact, been a substantial benefit to
3 customers.

4 As your Honors know, numerous intervenors
5 have asserted that DP&L's current ownership of
6 generation assets is what's causing DP&L's current
7 financial integrity problems and the Commission
8 should not approve an SSR that they claim would
9 support those generation assets.

10 Your Honors, witnesses who have made that
11 assertion include IEU Witness Bowser, IEU Witness
12 Hess -- I'm sorry, IEU Witness Bowser at page 15,
13 IEU Witness Hess at page 12, IEU Witness Murray at
14 page 22, FES Witness Lesser at page 31, FES Witness
15 Noewer at page 9, OCC Witness Duann at page 8, and
16 OEG Witness Kollen at page 8.

17 Ms. Seger-Lawson's testimony there is
18 responsive to their argument that DP&L's ownership of
19 generation assets is what's causing DP&L's problem.
20 As Ms. Seger-Lawson's testimony demonstrates, that
21 DP&L's historic ownership of those generation assets
22 has provided substantial benefits to customers and
23 explains why it was beneficial, at least until very
24 recently, I think it's disputed, it was beneficial to
25 customers that DP&L owned those generation assets and

1 DP&L still owns those generation assets, your Honor.

2 Then again, your Honor, the question and
3 answer on page 1 of Ms. Seger-Lawson's testimony
4 regarding DP&L's historic practice of providing below
5 market generation rates provides the necessary
6 factual predicate for the Q and A that starts on
7 line 9 of page 3, so the question and answer on
8 page 1 is, therefore, admissible for that additional
9 separate reason, your Honors.

10 Next, your Honor, on page 5 there is a
11 question and answer from Ms. Seger-Lawson regarding
12 the fact that a representative of IEU had made
13 certain statements to the Ohio General Assembly
14 relating to a provision of the Ohio Revised Code
15 4928.17(E).

16 Your Honor, a little bit of legislative
17 background here. As your Honors may recall, before
18 the 2008 amendments to Senate Bill -- I'm sorry, to
19 Chapter 4928, Ohio Revised Code 4928.117 stated that
20 the utility may, may, transfer its generation assets
21 at any time. The "may" and "at any time" are direct
22 quotes from the statute, your Honor.

23 Ms. Seger-Lawson's testimony demonstrates
24 that a representative of IEU had filed public
25 comments asking that that section be amended so that

1 utilities could not freely transfer their generation
2 assets.

3 The motion suggests that IEU's efforts to
4 amend the subsection were not successful but, in
5 fact, your Honor, the subsection was amended and now
6 provides that Commission approval is required before
7 a utility can transfer its generation assets.

8 Your Honor, the testimony is admissible
9 as proper rebuttal testimony because three IEU
10 witnesses have taken the position that the SSR should
11 not be permitted to be used to support DP&L's
12 generation assets.

13 The fact that IEU has made public
14 statements in which it has argued that a utility's
15 ability to restrict its -- I'm sorry, the fact that
16 IEU had made public statements arguing the utility's
17 ability to transfer its generation assets freely
18 should be restricted is inconsistent with the
19 position that IEU is now taking in this proceeding,
20 namely the fact that the Commission should not
21 consider DP&L's generation assets in evaluating
22 DP&L's request for an SSR and an ST.

23 MR. OLKER: Jeff, I'm sorry to interrupt
24 you, can you give a page site for Kevin Murray's
25 testimony?

1 MR. SHARKEY: Kevin Murray's testimony,
2 page 22.

3 MR. OLIKER: Thank you.

4 MR. SHARKEY: Then, your Honor, on
5 page 23 of Ms. Seger-Lawson's testimony, starting on
6 line 3, running through line 19, the intervenors have
7 asserted that that testimony is not rebuttal
8 testimony. In Ms. Seger-Lawson's testimony there she
9 testifies that the factual predicates underlying Ohio
10 Revised Code 4928.143(B)(2)(d) are satisfied.

11 That is appropriate rebuttal testimony
12 for two reasons, your Honor. They're related
13 reasons; one more general, one more specific. The
14 more general reason, your Honor, is that many
15 witnesses in this case have testified that the
16 Commission should deny DP&L's request for an SSR and
17 a switching tracker.

18 I ran through that lengthy list a little
19 bit ago and won't run through it now, but your Honors
20 are certainly familiar that that's been the topic of
21 many pieces of intervenor testimony and
22 Ms. Seger-Lawson's testimony that the statutory
23 elements are satisfied is, thus, appropriate rebuttal
24 testimony.

25 In addition, your Honor, it is

1 specifically responsive to the testimony of two
2 witnesses, at least. Your Honor, on Daniel Duann's
3 testimony, looking at page 7, there is a question
4 that says "Is the proposed service stability rider
5 permitted under Ohio law?"

6 Answer: "No. I was advised by counsel
7 there is no legal basis to include a nonbypassable
8 charge for financial integrity purposes in an ESP."

9 So Ms. Seger-Lawson's testimony, the
10 factual predicates underlying the statute is a direct
11 rebuttal of Mr. Duann's testimony.

12 And then, in addition, your Honor,
13 Mr. Kollen, page 4, has a statement that the
14 Commission should reject the company's premise that
15 its proposed recoveries and mechanisms result in or
16 improve rate stability or certainty which it claims
17 is the statutory basis for the requests.

18 Again, your Honor, Ms. Seger-Lawson's
19 testimony that the statutory elements are satisfied
20 is directly responsive to Mr. Kollen's testimony
21 there.

22 Your Honor, that's all I have.

23 EXAMINER PRICE: You left out Mr. Rose at
24 page 12, line 12, question 22. Dr. Rose, page 12.

25 MR. SHARKEY: I left out, in which part

1 of my argument, your Honor?

2 EXAMINER PRICE: The last one.

3 MR. SHARKEY: Well, then I'll add him.
4 Thank you, your Honor.

5 EXAMINER PRICE: That was fresh in my
6 memory.

7 MR. SHARKEY: Which page and line was
8 that, I apologize?

9 EXAMINER PRICE: Page 12, line 12.

10 MR. SHARKEY: Thank you, your Honor.

11 EXAMINER PRICE: Would you care to
12 address, they also make a argument that she's not
13 entitled, she is not able to present, a legal
14 opinion, because she is not an attorney. Would you
15 care to address that?

16 MR. SHARKEY: Yes, your Honor. As to the
17 statute, she's addressing factual elements, those are
18 specific elements of a statute and so they're factual
19 inquiries and, alternatively, your Honors, as you
20 know, she would be entitled to present her
21 understanding of the statute, as many other witnesses
22 in the case have.

23 But I would submit that that's not a
24 legal opinion at all, those are just testimony --
25 factual predicates in a statute were satisfied.

1 EXAMINER PRICE: Thank you.

2 Mr. Lang?

3 MR. LANG: Thank you, your Honor.

4 EXAMINER PRICE: Are you responding on
5 behalf of all the intervenors or --

6 MR. LANG: I'm unsure. I know I'm
7 responding on behalf of FES. I wouldn't presume on
8 behalf of the other intervenors.

9 EXAMINER PRICE: Okay.

10 MR. LANG: Your Honor, we've been taken
11 through the history going back to 1999-2000 that is
12 somewhat summarized in Ms. Seger-Lawson's testimony.
13 What was not in Ms. Seger-Lawson's testimony, as
14 described by opposing counsel, is all of the
15 references to the actual testimony purportedly being
16 rebutted to.

17 This is a, you know, a very interesting,
18 after-the-fact discussion of what they are trying to
19 rebut, but what they were able to come up with on the
20 first page, the second page, third page, really
21 pages 1 through 5, is that there is testimony in some
22 intervenor witnesses discussing returns on equity
23 over the last 10, 12, 13 years. And I think the
24 only --

25 EXAMINER PRICE: Mr. Lang.

1 MR. LANG: Yes.

2 EXAMINER PRICE: Before we go, I mean,
3 it's your representation in your filing, page 1,
4 Dayton Power & Light did not provide any testimony in
5 its direct case regarding its provision of retail
6 service during the 2000s and did not discuss the
7 history of corporate separation during the 2000s,
8 then you say, likewise, no intervenor testimony
9 provided direct testimony on these topics. That's
10 your representation there's no testimony.

11 MR. LANG: Yes, your Honor.

12 EXAMINER PRICE: What am I missing here?

13 MR. LANG: To be clear, the testimony
14 that they're trying to bring in on rebuttal is a
15 history of their discussion of how they provided
16 below market generation rates during this time
17 period. That is not rebuttal to the fact of what
18 their returns on equity were during this time period.

19 EXAMINER PRICE: Why are they not
20 entitled to show that the rate stabilization plans
21 and the ESP were win-win agreements? Mr. Kollen
22 clearly testified that they were, in his opinion,
23 earning, I think he said excessive earnings.

24 Why are they not entitled to say -- I
25 mean, you guys gave us the definition of "explain,"

1 "repel," "counteract," or "disprove." Within those
2 four categories why are they not entitled to explain
3 that although they may have been earning lots of
4 money, customers were enjoying below market rates?

5 MR. LANG: I think the -- well, because
6 the explanation is not directly tied to the testimony
7 that was submitted by intervenors with regard to the
8 return on equity.

9 What that explanation tells the
10 Commission, I guess, is that they could have been
11 earning more if they had -- if the rates hadn't been
12 below market. If the rates had been at market, then
13 maybe they would have been -- they would have had
14 higher ROEs. But that's not a rebuttal to the fact
15 that their ROEs were between 18 and 20 percent for
16 the last ten years.

17 EXAMINER PRICE: But that's an
18 explanation of the context of their earnings. I
19 mean, if you're saying the Commission in hindsight
20 should be saying we should have had higher rates in
21 their service territory in the last eight years, I'm
22 not sure the Commissioners are necessarily going to
23 want to make that statement.

24 MR. LANG: Well, I don't think that
25 there's any argument from the intervenors that they

1 should have been earning more than 18 to 20 percent.
2 I think the issue simply is that the 18 to 20 percent
3 earnings are being ignored by the company in this
4 case when they're making a financial integrity claim.

5 EXAMINER PRICE: I understand that. Let
6 me ask you, is it just the failure to do the
7 incantation of I am responding to this witness on
8 this page that you're concerned about?

9 MR. LANG: It's not just that, your
10 Honor. It certainly is that, that we certainly do
11 believe that they decided to bring in an argument
12 that could have obviously been in their direct case,
13 an argument that they could have made in support of
14 their direct case, in support of -- I guess they're
15 saying this is in support of their financial
16 integrity argument.

17 None of this is something that is, we
18 believe, responsive to intervenor testimony; it's
19 testimony that should have been in the direct case if
20 they wanted to make that case. And if they had made
21 these arguments in their direct case, then the
22 intervenors would have had the opportunity to
23 respond.

24 But now they're coming back with
25 essentially a new argument, a new theme, that they

1 did not include in their direct case, they're coming
2 back only on reply and that is -- that's the concern,
3 that's always the concern, your Honor, with rebuttal
4 is it's very unlikely -- very unusual in Commission
5 cases to have surrebuttal granted.

6 EXAMINER PRICE: Very unusual.

7 MR. LANG: Very unusual, your Honor.

8 Obviously, if this comes in, we have a
9 request for that surrebuttal, but we believe that the
10 easiest course of action and the fairest course of
11 action to all the parties is to strike these new
12 arguments that should have been in the direct case in
13 the first case if they wanted to include it in the
14 direct case.

15 There were additional arguments made with
16 regard to the Q and A at the top of page 3 and the
17 argument, as I heard it, was that this is a Q and A
18 responding to testimony by several intervenors, which
19 is certainly true that several intervenors have said
20 the SSR should be denied.

21 There's nothing in this Q and A that,
22 again, could not have been in direct testimony and
23 it's not responding to contrary evidence. It's
24 simply repeating, as set forth in this Q and A, that
25 DP&L Witness Chambers has testified with regard to

1 financial integrity and that DP&L believes that
2 that's a reason -- that's a reason why the financial
3 integrity argument should be adopted.

4 There's no response here to actual
5 evidence. Again, they haven't cited actual evidence
6 submitted by intervenors in this case. They're
7 responding to an argument that the SSR shouldn't be
8 approved in this case by saying: See what we said
9 before. That is, again, that's not proper rebuttal
10 testimony.

11 And then the next -- the next argument I
12 think we did address in the brief with regard to the
13 ownership of the generation assets during the 2000s,
14 what counsel said this is responding to is the
15 argument that current ownership is the problem. And
16 we agree that the argument some of the intervenors
17 are making is that current ownership is the problem.

18 EXAMINER PRICE: You say in your brief
19 that no testimony discussed the history of corporate
20 separation in the 2000s. But Mr. Hess has lengthy
21 discussion, page 6 "...briefly describe the role of
22 the SSO as part of Ohio's electric restructuring and
23 adoption of the 'customer choice' regulatory model."

24 Then on page 7, will you please -- "Will
25 you explain the Ohio restrictions?"

1 And then on page 8: "As you understand
2 it, did Senate Bill 3 require the vertically
3 integrated electric utilities to structurally
4 separate the unbundled functions of the utility?"

5 On page 9: "Did Dayton Power & Light
6 file a corporate separation plan with its ETP
7 filings?"

8 Page 10: "Did DP&L implement the plan as
9 proposed?"

10 Why aren't they entitled to fill in the
11 rest of the history? If Mr. Hess walks this
12 Commission from the drafting and enactment of Senate
13 Bill 3 up until 2003, why under rebuttal is
14 Ms. Seger-Lawson not entitled to put on evidence as
15 to what happened after 2003 to today?

16 MR. LANG: Well, I think in this section,
17 your Honor, what they're discussing and purporting to
18 rebut, again, is the argument that current ownership
19 of generation assets is a problem. And purporting to
20 rebut that argument by saying there's --

21 EXAMINER PRICE: I'm just asking you why
22 are they not entitled to fill in the history.
23 Whatever you think that they are intending to do, why
24 are they not entitled to fill in the actual history
25 of what happened? That's all I'm asking you to

1 respond to.

2 MR. LANG: I don't -- and, your Honor, I
3 don't think that Mr. Hess was putting historical
4 ownership of the DP&L generating assets at issue.
5 Mr. Hess, as Mr. Hess does, was certainly providing a
6 lengthy recitation of SB 3 events and noting --

7 EXAMINER PRICE: But he certainly passed
8 over everything after 2003.

9 MR. LANG: And certainly noting some of
10 the issues with regard that in Ohio law structural
11 separation, corporate separation is required with the
12 exceptions for, you know, to show cause and for an
13 interim period.

14 This testimony doesn't explain or rebut
15 what is in Mr. Hess's testimony. Mr. Hess's
16 testimony is a very, I would say a high-level
17 discussion of Ohio law exists, Ohio law requires
18 corporate separation.

19 EXAMINER PRICE: Page 24, question 42:
20 "Did DP&L end its MDP on December 31st, 2003?"

21 He even cites to one of the cases she
22 cites to as to what happened. Again, why aren't they
23 entitled to -- if he's going to give his version of
24 history of how we got here, why aren't they entitled
25 to provide their version of how we got here?

1 MR. LANG: Quite frankly, your Honor, to
2 the extent that you describe it as, you know, their
3 version of history versus his version of history, I
4 think neither version of history -- let me put it a
5 different way.

6 Their version of history isn't explaining
7 or rebutting an issue in this case.

8 EXAMINER PRICE: Okay.

9 MR. LANG: What has been put at issue in
10 this case is, I think the argument that they're
11 trying to respond to is that they did something wrong
12 by owning these assets during the 2000s. There's
13 certainly a factual history, there's, as you said,
14 there's Commission orders, there's cases, certainly
15 nothing wrong going forward in briefs of citing
16 Commission orders to say there is a history here if
17 that's what they -- if that's what they think is
18 relevant to this case.

19 This testimony that's being provided is
20 not that briefing argument. This is offered as
21 testimony and as history, not as a brief. We
22 certainly wouldn't object to it as a brief citing
23 orders.

24 Your Honor has said previously with
25 regard to that that, among other things, the

1 Commission doesn't have to take administrative notice
2 of the Commission orders, they can be cited at will
3 by the parties, they're free to do that.

4 EXAMINER PRICE: If I grant your motion
5 to strike, are they entitled to go back and ask us to
6 strike the portions from Mr. Hess's testimony that
7 they could have just raised in brief instead of
8 describing the history?

9 MR. LANG: I think I'll leave Mr. Darr to
10 answer that one. I won't speak for Mr. Hess's
11 testimony.

12 And I think the last issue --

13 EXAMINER PRICE: Mr. Lang, I only need to
14 find -- there only needs to be one witness they
15 respond to. You can't say I, you know, we didn't put
16 Hess's testimony on so we're not going to respond to
17 it.

18 MR. LANG: That's fair, your Honor.

19 And I think the last Q and A on page 5
20 that was discussed is a response to I guess
21 Mr. Randazzo's testimony from some time in the past.
22 Mr. Randazzo's not a witness in this case, this isn't
23 a rebuttal to IEU testimony, I guess it's a rebuttal
24 to Mr. Randazzo's testimony from years gone by, I
25 just don't -- just don't see this as appropriate

1 rebuttal in this case.

2 And the last issue, page 23, again, this
3 is an issue that there's nothing here that couldn't
4 have been and -- couldn't have been part of the
5 direct case. It's just a, you know, it's a reference
6 to 143(B)(2)(d). There's nothing here that's actual
7 rebuttal.

8 EXAMINER PRICE: Okay, let's talk about
9 Mr. Rose's testimony. Let's talk about Mr. Rose's
10 testimony. Yesterday on page 12, question 22: "Can
11 a utility include in its electric security plan a
12 charge, quote, 'stabilizing or providing certainty
13 regarding retail electric service,'" end quote.

14 Answer: "No. Per my understanding and
15 advice of counsel, the SSR is not a term, condition,
16 or a charge that is, as stated in R.C.
17 4928.143(B)(2)(d), quote, 'relating to limitations on
18 customer shopping for retail electric generation
19 service, bypassability, standby, back-up, or
20 supplemental power service, default service, carrying
21 costs, amortization periods, and accounting or
22 deferrals,'" end quote.

23 I do not find that the SSR is any one of
24 the permissible charges listed in section --
25 subsection (B)(2)(d) of R.C. 4928.143.

1 MR. LANG: And, your Honor --

2 EXAMINER PRICE: It seems to me that her
3 testimony on page 3 is directly rebutting what he's
4 saying.

5 MR. LANG: And this is, I believe, the
6 exact fact pattern that was in the Ameritech case
7 that we have cited in our brief where I believe it
8 was the esteemed Dr. Ankum's testimony from AT&T that
9 was at issue in that case, who I remember well, but
10 in that case you had one party putting in testimony
11 saying "yes, it is," another party putting in
12 testimony saying "no, it isn't," and then the
13 rebuttal testimony comes back saying "yes, it is."

14 EXAMINER PRICE: So they should have
15 anticipated that Dr. Rose was going to testify "no,
16 it isn't"?

17 MR. LANG: No. The issue isn't that --
18 the issue isn't that they didn't anticipate it. The
19 issue is this is part of their direct case. Dr. Rose
20 provided a response on advice of counsel, presumably
21 what's in their --

22 EXAMINER PRICE: More than just advice of
23 counsel. That was based on his understanding of the
24 law.

25 MR. LANG: All right. Well, I'm just

1 quoting what you read to me from his testimony which
2 starts with "on advice of counsel I'm saying this."

3 EXAMINER PRICE: Actually, it says "Per
4 my understanding and advice of counsel." If it was
5 just advice of counsel, it would serve no purpose at
6 all.

7 MR. LANG: And what's happening here is
8 you have the direct case, when you have testimony
9 submitted in direct, you have an opinion, then you
10 have an opinion such as Dr. Rose has submitted in
11 opposition to that, then you have rebuttal testimony
12 coming back that says nothing more than what was in
13 the direct case and nothing more than is in addition
14 to what was said by the opposition.

15 That is not proper rebuttal, and that is
16 exactly what was stricken in the Ameritech case that
17 we cite in our papers.

18 EXAMINER PRICE: Let's take up the legal
19 interpretation question. Are intervenors still
20 holding that she is rendering a legal opinion and it
21 should be struck on that basis?

22 MR. LANG: I think in the papers we did
23 not move to strike it on the basis that she's
24 rendering a legal opinion. The point that we were
25 trying to make in the papers is that, obviously, she

1 can't render an opinion.

2 She must, as you just said with Dr. Rose,
3 she has to be doing something more than rendering a
4 legal opinion. And to the extent that that something
5 more that she's doing is exactly what's in the direct
6 case, then there's no rebuttal here.

7 Thank you, your Honor. And I'm guessing
8 Mr. Darr would probably follow.

9 MR. DARR: If I understand the legal
10 standard correctly, your Honor, the point of a
11 rebuttal case is to contradict or explain, using the
12 term from the case law, the position of the person
13 offering the rebuttal testimony vis-a-vis the case
14 that's been presented by the other party.

15 The case presented by IEU specifically
16 addresses, with regard to corporate separation and
17 the issues concerning the generation assets,
18 basically two issues: One, is the company, because
19 of its ownership of generation assets, required to do
20 certain things pursuant to the Commission's rules and
21 the statutory requirements of 4928.17. Second, is it
22 accounting for that information correctly?

23 That is what the case is, and that is
24 what should be rebutted.

25 In contrast to that, the first question

1 offered by Ms. Seger-Lawson and to which she is
2 responding is was DP&L providing below market rates.
3 How is that issue placed into issue in this case?

4 EXAMINER PRICE: I don't want to ask you
5 to respond to something, to OEG's arguments, but
6 Mr. Kollen did put into play the question of did they
7 excessively earn, I'm not talking about IEU's case in
8 this question. I'm solely talking about Mr. Kollen's
9 testimony. I mean, he put into play what they were
10 earning in the previous decade, didn't he?

11 MR. DARR: That's correct. But it was
12 done in the context of addressing the issue going
13 forward of whether or not it is relevant or
14 permissible, actually, appropriate or reasonable to
15 justify the SSR.

16 Whatever those rates were were deemed to
17 be lawful. That issue was not placed at issue in
18 this case.

19 EXAMINER PRICE: Well, he says
20 "excessive." He doesn't say that these were lawful.
21 He says that these were excessive earnings and the
22 Commission should consider those excessive earnings
23 in rendering a decision on the SSR.

24 If he makes that claim, why aren't they
25 entitled to say this was a win-win agreement,

1 everybody benefited, just as the Commission asked
2 them to do in the rate stabilization plan?

3 MR. DARR: Quite simply, your Honor,
4 because it doesn't rebut any issue that's been
5 presented in this case.

6 EXAMINER PRICE: It explains the issue.

7 MR. DARR: Explains an issue that's -- it
8 must explain an issue that has, in fact, been raised
9 and it doesn't -- that issue, whether or not the
10 rates were lawful has never been raised in this case.
11 It is only in the rebuttal testimony.

12 EXAMINER PRICE: No, no, Mr. Kollen
13 doesn't raise the issue whether they were lawful. He
14 raises the issue whether the earnings were excessive.
15 He says "excessive earnings" in his testimony. He
16 has a pretty chart to that effect.

17 MR. DARR: And I appreciate that, your
18 Honor, but during the period in which those earnings
19 were generated, pre-2009, first of all, there was no
20 excessive earnings test; second of all, the
21 Commission had explicitly said that earnings were not
22 relevant for purposes of determining --

23 EXAMINER PRICE: So you're saying
24 Mr. Kollen's testimony is not relevant to this case.
25 I think they can agree with that.

1 MR. DARR: With regard to the going
2 forward I think it's very clear that his argument,
3 similar to the argument that IEU has made, is that
4 there's an asymmetric position taken by the company.
5 But that doesn't in any way justify going back and
6 asking the question which is essentially what
7 Ms. Seger-Lawson does for the rest -- and premise,
8 according to Mr. Sharkey, for the rest of her
9 testimony.

10 As to whether or not the underlying rates
11 were lawful, that issue is not in play. And if that
12 issue is not in play, then what we are really talking
13 about is something that is not truly rebuttal
14 testimony.

15 Additionally, your Honor, the other
16 issues that we've raised in this case with regard to
17 the history is the fact that there are transition
18 cost revenues that have already been generated.
19 Whether or not there were lawful rates doesn't go to
20 that either.

21 EXAMINER PRICE: But, Mr. Hess --

22 MR. DARR: Mr. Hess's testimony --

23 EXAMINER PRICE: Mr. Darr, Mr. Hess's
24 testimony, the section isn't entitled "Transition
25 Revenues," it's entitled "Corporate Separation."

1 MR. DARR: Correct, and I've already
2 addressed that, but the other issue he raises where
3 history has been addressed and which Mr. Sharkey uses
4 as a justification is --

5 EXAMINER PRICE: Maybe you can respond to
6 my question I asked Mr. Lang: If Mr. Hess provides a
7 partial history of corporate separation, why isn't
8 the company on rebuttal entitled to fill in the rest
9 of the history on corporate separation?

10 MR. DARR: I think that it probably is
11 entitled with regard to the transition revenue
12 claims. That is not how they are using this,
13 however. What they have argued here is that this is
14 somehow responsive to a whole other set of issues.
15 Well, those issues were never raised.

16 And I fail to see how we have to
17 anticipate every possibility of the way that DP&L is
18 scoping its case. They've told us what it's going to
19 be used for, we've responded to that.

20 EXAMINER PRICE: So there's no
21 implication by Mr. Hess's testimony that these
22 generation assets should have already been spun off
23 by this point.

24 MR. DARR: He has not --

25 EXAMINER PRICE: Any inference by the

1 Commission to that effect would be inaccurate.

2 MR. DARR: That is not his testimony,
3 your Honor. His testimony is there is a problem with
4 the way they're handling -- they're dealing with the
5 assets within the legal structure that currently
6 exists.

7 Finally, with regard to the testimony at
8 the end of Ms. Seger-Lawson's rebuttal, as I
9 understand it from Mr. Sharkey's response, they're
10 responding to Mr. Duann's statement that there's no
11 legal basis and Mr. Kollen's argument that there's no
12 legal basis. If that's true, as was pointed out in
13 the motion, she's not in a position to respond to
14 that, otherwise the testimony basically is just a
15 regurgitation.

16 EXAMINER PRICE: Is there any reason that
17 she is less credible on these issues than Dr. Rose
18 was yesterday? Should I be reconsidering the motion
19 to strike yesterday that the company filed?

20 MR. DARR: I wasn't here to listen to the
21 arguments, but I think the answer --

22 EXAMINER PRICE: I'll let Ms. Yost answer
23 that question.

24 MS. YOST: No, no.

25 EXAMINER PRICE: No, there's no reason to

1 believe she's less credible than Mr. Rose or, no, I
2 should not be reconsidering --

3 MS. YOST: You should not be
4 reconsidering your ruling yesterday.

5 EXAMINER PRICE: How about the first
6 question: Is there any reason to believe she is less
7 credible than Mr. Rose on this topic -- Dr. Rose on
8 this topic?

9 MS. YOST: On this specific topic, yes,
10 your Honor. You heard about Dr. Rose's experience
11 with the LSC.

12 EXAMINER PRICE: He wasn't at LSC.

13 MS. YOST: The experience.

14 EXAMINER PRICE: During the period
15 4928.143 was enacted. That was on the record
16 yesterday. So with that in mind, is there any reason
17 to believe that she's less credible than Dr. Rose?

18 MS. YOST: I think she has less
19 experience in this area, your Honor. And, you know,
20 I would just point out the fact that, you know,
21 DP&L's counsel makes this distinction if you call it
22 a factual matter, you're safe, and no one should move
23 to strike. They've been striking left and right all
24 the other testimony that is typical --

25 EXAMINER PRICE: And all of them have

1 been denied.

2 MS. YOST: I know, your Honor, but --

3 EXAMINER PRICE: The only people being
4 consistent here are the Bench.

5 MS. YOST: And I appreciate that, your
6 Honor, but to the extent that they somehow overrule
7 the Bench's rulings in their motion, it makes the
8 other parties like, wow, if somehow they convince the
9 Commission that --

10 EXAMINER PRICE: And I accept that and
11 that's why I was asking that you filed this before we
12 ruled on Dr. Rose.

13 MS. YOST: Sure.

14 EXAMINER PRICE: That's why I was asking
15 if you were dropping that in light of the rulings
16 regarding Dr. Rose's testimony. I understand she
17 felt like she had to do it defensively.

18 MS. YOST: Yes, and I have Dr. Duann
19 coming up on Monday and we all know the company has
20 moved to strike his testimony. So it's a rock and a
21 hard place.

22 EXAMINER PRICE: We've already denied
23 that motion.

24 MS. YOST: And I'm hopeful that that will
25 be consistent throughout.

1 MR. DARR: If I may, your Honor, the
2 question is what exactly is new and explained by the
3 testimony that's offered by Ms. Seger; basically she
4 is saying exactly the same thing that Mr. Jackson
5 stated, Mr. Chambers stated, and I believe
6 Mr. Herrington stated on the record. It's not
7 responding to anything. It's simply restating what
8 has already been stated.

9 So, with that I will sit down.

10 EXAMINER PRICE: Just contemplating the
11 last thing you said; that there's nothing new in
12 this.

13 MR. DARR: There isn't, your Honor. She
14 says that.

15 EXAMINER PRICE: I thought Mr. Lang said
16 these were all things she should have raised in her
17 direct testimony. And now you're saying there's
18 nothing new.

19 MR. DARR: She could have raised it in
20 her direct testimony. I don't think there's anything
21 inconsistent with that. What I am suggesting, your
22 Honor, is that there's nothing new or different
23 explained here, it's simply restating their legal
24 argument.

25 EXAMINER PRICE: Okay. At this time I

1 think we spent plenty of time on this, the motion to
2 strike is denied.

3 MR. SHARKEY: Thank you, your Honor.

4 MS. YOST: Your Honor.

5 EXAMINER PRICE: No. One second. I'd
6 like to explain the ruling just a little bit.

7 MS. YOST: Sure. Thank you, your Honor.

8 EXAMINER PRICE: The movants had argued
9 that Dayton did not -- that no intervening witness
10 had raised issues regarding Dayton's provision of
11 retail service during the 2000s; the Bench finds that
12 Mr. Kollen's testimony directly addresses the
13 provision of Dayton's service territory or provision
14 of retail service during the 2000s and this is fair
15 within her testimony, it's fair rebuttal to that
16 issue.

17 Intervenorors represent in the motion that
18 there are -- no intervenor witness presented the
19 history of corporate separation during the 2000s; the
20 Bench finds Mr. Hess's testimony presented an
21 extensive and quite accurate description of corporate
22 separation in the 2000s.

23 With respect to the issues regarding the
24 definition of whether an SSR satisfies
25 4928.143(B)(2)(d), the Bench finds that Dr. Rose put

1 that at issue, and her testimony fairly rebuts that
2 testimony.

3 Further, to the extent that anybody is
4 arguing that the testimony should be stricken for
5 rendering a legal opinion, we have consistently
6 throughout this proceeding denied those motions and
7 allowed witnesses to testify as to regulatory
8 matters.

9 MS. YOST: Thank you. Your Honor, at
10 this time I'd like to make a, since we're on the
11 topic of striking testimony, an oral motion to strike
12 a portion of Ms. Seger-Lawson's testimony that's
13 separate from the motion that was filed yesterday.

14 EXAMINER PRICE: Okay. Well, do we want
15 to get to -- get Ms. Hagans up and down before we --
16 I think we have very brief cross on that anyways.

17 MS. YOST: Okay, your Honor.

18 EXAMINER PRICE: I don't think she wants
19 to be hanging around here.

20 EXAMINER MCKENNEY: OCC, are you ready to
21 call?

22 MR. BERGER: Yes, we're ready to call
23 Kathy Hagans to the stand, your Honor.

24 EXAMINER MCKENNEY: Ms. Hagans, please
25 raise your right hand.

1 (Witness sworn.)

2 EXAMINER MCKENNEY: Thank you. Please be
3 seated.

4 MR. BERGER: Your Honor, Ms. Hagans'
5 testimony has previously been marked as OCC
6 Exhibit 18 in this proceeding.

7 EXAMINER MCKENNEY: Mr. Berger.

8 - - -

9 KATHY L. HAGANS
10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Berger:

14 Q. Ms. Hagans, would you please give your
15 full name and business address for the record.

16 A. Kathy Hagans, 10 West Broad Street,
17 Columbus, Ohio, 43215.

18 Q. And are you the same Kathy Hagans whose
19 direct testimony was filed in this proceeding as OCC
20 Exhibit 18?

21 A. Yes.

22 Q. And on whose behalf are you appearing
23 here?

24 A. The Office of the Ohio Consumers'
25 Counsel.

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1 Q. Do you have your prepared testimony with
2 you on the stand?

3 A. Yes, I do.

4 Q. Did you prepare that testimony or have it
5 prepared at your direction?

6 A. Yes.

7 Q. Do you have any changes or corrections to
8 your direct testimony at this time?

9 A. No.

10 Q. If I asked you today the same questions
11 that are found in OCC Exhibit 18, would your answers
12 be the same?

13 A. Yes.

14 MR. BERGER: Your Honor, at this time we
15 would move for the admission of OCC Exhibit 18 and
16 tender the witness for cross-examination. Thank you.

17 EXAMINER McKENNEY: Thank you.

18 At this time we'll move to
19 cross-examination.

20 RESA, cross-examination?

21 MS. PETRUCCI: Yes.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Petrucci:

25 Q. Good morning, Ms. Hagans.

1 A. Good morning.

2 Q. With respect to your proposal to have
3 CRES providers in DP&L's territory pay for the six
4 competitive enhancements, is it that you're proposing
5 that all active CRES providers in DP&L's territory
6 pay for the enhancements?

7 A. Well, I don't make that distinction in my
8 testimony. I think that would be determined by
9 however DP&L determined that it would be appropriate;
10 whether it would be current CRES providers or whether
11 it would be a tariffed charge going forward that any
12 CRES provider would pay.

13 Q. If your recommendation was to be
14 accepted, the six enhancements would be new
15 additional costs of doing business in DP&L's service
16 territory for the CRES providers; isn't that correct?

17 A. Yes, I believe it would be correct.

18 Q. And would those additional dollars be
19 unique costs for those CRES providers in DP&L's
20 territory?

21 A. I don't know the answer to that.

22 Q. Would they be unique to DP&L for a CRES
23 provider being active in their territory?

24 A. I don't understand the question.

25 Q. If these costs were imposed on the CRES

1 providers, the costs would be specific to the CRES
2 provider if they're operating in DP&L's service
3 territory, correct?

4 A. Well, if I understand what you're asking,
5 it would be DP&L that would be charging them, so to
6 the extent the CRES provider was in DP&L territory,
7 that CRES provider would be paying those because DP&L
8 would be charging them.

9 Q. So there would be additional dollars that
10 would be imposed for a CRES provider in order to
11 operate in DP&L's territory that is different and
12 unique to that particular service territory.

13 A. I don't know the answer to that in terms
14 of what other companies -- what costs CRES providers
15 pay to other companies or don't pay to other
16 companies.

17 Q. In your testimony you stated that the
18 costs for these six enhancements, if your proposal
19 was adopted, could be passed on to customers by the
20 CRES providers; isn't that correct?

21 A. To the extent that the market would bear
22 the CRES providers passing through those costs, yes.
23 Are you talking about on page 6?

24 Q. I am, and specifically at lines 19 and
25 20.

1 A. Yes.

2 Q. Okay. And if the CRES providers did pass
3 along these costs for the six enhancements, then
4 ultimately customers would pay the same costs that
5 you're advocating that they not pay; isn't that
6 correct?

7 A. Well, there's a difference between all
8 customers -- there's a difference between customers
9 of DP&L and customers of CRES providers, number one,
10 and number two, it would -- to me it would be a
11 business decision of the CRES provider as to whether
12 they would pass them through, how much they would
13 pass them through.

14 Q. But let's just assume --

15 A. And there's not a dollar-for-dollar
16 pass-through. I mean, we're not talking about CRES
17 providers who have rates where they pass through
18 dollar for dollar.

19 Q. But let's just assume that if the CRES
20 provider did pass along the costs for these six
21 enhancements, then isn't it correct that customers,
22 in fact, would pay for the costs that you're saying
23 they shouldn't pay by having the costs put in the
24 reconciliation rider? Isn't that correct?

25 A. I didn't catch the last part, I'm sorry.

1 Q. If you assume that the CRES providers
2 choose to pass along the costs for these six
3 enhancements, I just want you to assume that for a
4 moment, doesn't the effect of that mean that their
5 customers would pay the costs of these six
6 enhancements even though you advocate that they
7 shouldn't be imposed -- those costs should not be
8 imposed upon them through the reconciliation rider?

9 A. If a CRES provider passes these costs
10 along to its customers, shopping customers, CRES
11 customers, would pay the costs. But what DP&L has
12 proposed by including these in the reconciliation
13 rider is that all customers of DP&L would pay the
14 costs.

15 Q. Right, but --

16 A. So with that distinction and with that
17 assumption, yes.

18 Q. And specific to the proposal to eliminate
19 the minimum stay, the -- well, let me back up.

20 The minimum stay restricts when
21 nonshopping customers enroll with a CRES provider;
22 isn't that correct?

23 A. My -- I'm not sure that's my
24 understanding of what the minimum stay is. I thought
25 the minimum stay was for a customer who shops, they

1 have to -- they have to have shopped for a certain
2 amount of time before they are allowed to come back
3 to the SSO.

4 Q. Okay. Isn't actually the minimum stay
5 provision a requirement that's imposed upon a
6 customer who returns to DP&L and restricts that
7 customer from actually going back into the shopping
8 market?

9 A. Yes. I actually think you're correct.

10 Q. So if DP&L -- if this particular
11 enhancement were accepted and the minimum stay is
12 eliminated, that will give the customer, the DP&L
13 customer, greater freedom to enter into the shopping
14 market; isn't that correct?

15 A. Yes. Several of these give customers
16 greater freedom which, in turn, provides more
17 customers for CRES suppliers and, hence, my
18 recommendation that CRES suppliers should pay the
19 costs.

20 Q. I want you to just listen to my question
21 and just answer the question, please. But specific
22 to the minimum stay, it's a benefit that's provided
23 to a nonshopping customer because then they have more
24 freedom; isn't that correct?

25 A. Freedom to shop. Is that what you --

1 Q. Is that a "yes"?

2 A. If you're talking about they have more
3 freedom to shop, then it's a yes.

4 Q. Okay. But it's applicable for a
5 nonshopping customer, wouldn't you agree?

6 A. Yes.

7 Q. And then with respect to the web-based
8 portal that is proposed as an enhancement, the portal
9 is going to allow the information to be available for
10 all the components of the competitive marketplace;
11 isn't that correct?

12 A. Well, what I say in my testimony and
13 what -- the way Ms. Seger-Lawson explains it is that
14 it will allow CRES providers to obtain DP&L customer
15 information in a more usable and manageable fashion.

16 Q. It will include customer usage, the
17 information in the web-based portal; isn't that
18 correct?

19 A. I don't know that for a fact, but I would
20 imagine that that's a possibility. I know that that
21 is part of the -- part of what companies are trying
22 to provide with smart grid and that type of thing, so
23 I don't know if that's a possibility or not a
24 possibility but it wouldn't be surprising if it were.

25 Q. Let's just assume that it is. Then with

1 that customer usage information within the portal
2 there would be, then, information that could be used
3 for conservation plans for specific customers; is
4 that correct?

5 MR. BERGER: Your Honor, I'm going to
6 object in that she hasn't laid a foundation with any
7 information from the company's filing, the witness
8 says she doesn't know any of the -- doesn't know the
9 details here and then she's asking her to make an
10 assumption about information that's not in the
11 record.

12 EXAMINER MCKENNEY: The objection's
13 overruled. I believe it's a hypothetical.

14 If you could maybe flesh out the
15 hypothetical a little bit more.

16 MS. PETRUCCI: Sure.

17 Q. If we just -- let's just assume that a
18 web-based portal will contain customer usage
19 information -- well, wouldn't it be a benefit for the
20 customer to be able to make decisions in the future
21 about conservation plans by having that information
22 contained or accessible through a portal?

23 A. Probably.

24 Q. Now, if we turn to the auto-cancel
25 feature for bill-ready billing, is this enhancement

1 going to make the DP&L bills more accurate?

2 A. I would hope so to the extent that if
3 there's a cancellation only on DP&L's portion of the
4 bills and not on CRES providers' portions of the
5 bills, that would be a problem for the customer. So,
6 yes, I would think it would make them more accurate.

7 Q. Okay. Is that a benefit that the
8 customer would receive by having their bill be more
9 accurate?

10 A. It's a benefit that the customer and any
11 participant in the competitive market would derive,
12 yes.

13 Q. Okay. Then with respect to the sync
14 lists that are proposed to be provided in a
15 standardized format on a monthly basis, isn't it true
16 that the sync lists will also ensure that billing is
17 accurate?

18 A. Yes. But, again, that not only customers
19 benefit from that but the CRES providers are the --
20 like I say in my testimony, are the correct
21 beneficiaries of that by being able to gain more
22 customers.

23 Q. But it's true that the customer will
24 benefit, in fact, by having such situation with the
25 sync lists.

1 A. I believe that they would, yes.

2 Q. Then with the historical interval usage
3 data enhancement, is that an enhancement that would
4 be helpful to residential customers? Do you know?

5 A. From what I know about historical
6 interval usage data, you know, I don't know the
7 answer to that question. I know that it provides
8 more detailed usage information hourly and subhourly,
9 I remember reading that, but actually I don't know if
10 it would benefit residential customers or not.

11 MS. PETRUCCI: I have no further
12 questions at this time.

13 EXAMINER MCKENNEY: Thank you,
14 Ms. Petrucci.

15 Ms. Bojko?

16 MS. BOJKO: No questions, your Honor.
17 Thank you.

18 EXAMINER MCKENNEY: Mr. Williams?

19 - - -

20 CROSS-EXAMINATION

21 By Mr. Williams:

22 Q. Just one clarifying question, Ms. Hagans.
23 So you're not aware of any other EDU that imposes the
24 costs of competitive enhancements only on CRES
25 providers, are you?

1 A. I'm not aware whether they do or whether
2 they don't.

3 MR. WILLIAMS: Nothing further.

4 EXAMINER MCKENNEY: FES?

5 MR. HAYDEN: No, thank you.

6 EXAMINER MCKENNEY: IEU?

7 MR. DARR: No questions.

8 EXAMINER MCKENNEY: Mr. Yurick?

9 MR. YURICK: No questions, thank you,
10 your Honor.

11 EXAMINER MCKENNEY: Mr. Faruki?

12 MR. FARUKI: No, your Honor.

13 EXAMINER PRICE: I have a couple
14 questions. Do you want to ask one first?

15 EXAMINER MCKENNEY: Just a real quick
16 question, you make a recommendation that all CRES
17 providers would pay the costs of these. Do you have
18 a recommendation as to whether that will be assessed
19 on a volumetric basis? A flat basis amongst CRES
20 providers?

21 THE WITNESS: I don't.

22 EXAMINER MCKENNEY: All right.

23 EXAMINER PRICE: Is it unfair for the
24 Bench to infer that although everybody thinks these
25 enhancements are a good idea, nobody thinks enough of

1 them to be willing to pay for them?

2 THE WITNESS: Well, I don't know the
3 answer to that question.

4 EXAMINER PRICE: Let me ask it a
5 different way. The Commission has three choices with
6 respect to these competitive enhancements; they can
7 approve them and ask the CRES providers to pay for
8 them, they can approve them and ask for customers to
9 pay for them, or they can not approve them at all.

10 If your preferred recommendation were off
11 the table, approve them and have the CRES providers
12 pay for them, and it came down to the decision at the
13 Commission to not approve them or approve them and
14 have customers pay for them, what is OCC's position
15 on that question?

16 THE WITNESS: If my proposal was off the
17 table?

18 EXAMINER PRICE: Yes.

19 THE WITNESS: I don't know what OCC's
20 position would be on that question.

21 EXAMINER PRICE: Thank you.

22 EXAMINER McKENNEY: Redirect?

23 Sorry, does staff have questions?

24 MR. MARGARD: No, thank you, your Honor.

25 EXAMINER McKENNEY: Redirect?

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REDIRECT EXAMINATION

By Mr. Berger:

Q. Ms. Hagans, when you say that customers will benefit from things like the sync lists and things of that nature, are you saying that they're benefiting as customers of suppliers after they switch?

A. What I'm saying is that they benefit from -- yes, they would benefit as customers of suppliers if they switched, presumably they would benefit, and also the competitive market benefits where everybody benefits when customers have more choice.

But, to me, it's the CRES suppliers who are going to gain those customers who are going to benefit the most and that's why I make my recommendation the way I do.

MR. BERGER: Thank you.

EXAMINER McKENNEY: Recross?

MS. PETRUCCI: I have none.

EXAMINER McKENNEY: Anyone have recross for the witness?

(No response.)

EXAMINER McKENNEY: Thank you. You're excused.

1 Mr. Berger.

2 MR. BERGER: We would move the admission
3 of OCC Exhibit 18. Thank you, your Honor.

4 EXAMINER McKENNEY: Any objection?

5 (No response.)

6 EXAMINER McKENNEY: It will be so
7 admitted.

8 (EXHIBIT ADMITTED INTO EVIDENCE.)

9 EXAMINER PRICE: Mr. Faruki, would you
10 like to call your next witness?

11 MR. FARUKI: Yes, thank you, your Honor.
12 We're going to call Dona Seger-Lawson in rebuttal,
13 and I want to express my appreciation to the Bench
14 and to the parties for letting her be called out of
15 order in view of her imminent vacation.

16 EXAMINER McKENNEY: Let's go off the
17 record real quick.

18 (Discussion off the record.)

19 EXAMINER McKENNEY: Let's go back on the
20 record.

21 (Witness sworn.)

22 EXAMINER PRICE: Before we take any
23 motions for cross let's go ahead and introduce the
24 exhibit and we'll go from there.

25 MR. FARUKI: Thank you, your Honor. I

1 would ask that the rebuttal testimony of Dona
2 Seger-Lawson be marked as DP&L Exhibit 12. I say 12,
3 your Honor, because I believe we skipped 12 earlier
4 and we marked a 13.

5 EXAMINER PRICE: It will be so marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 - - -

8 DONA SEGER-LAWSON

9 being first duly sworn, as prescribed by law, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 By Mr. Faruki:

13 Q. Ms. Seger-Lawson, do you have a copy of
14 your filed rebuttal testimony before you?

15 A. I do.

16 Q. Do you have any changes or corrections
17 you wish to make to it?

18 A. Yes.

19 Q. Would you tell us what they are.

20 A. On page 8, line 11, 8.2 million should be
21 8.4 million. On line 14, still on page 8, 8.4 -- I'm
22 sorry, 8.2 million should be 8.4 million. And then
23 the 38 percent should be 39 percent.

24 Also on page 20, line 2, 340 percent
25 should be 342 percent.

1 MS. BOJKO: I'm sorry, I couldn't hear
2 you, you're trailing off.

3 THE WITNESS: Page 20, line 2,
4 340 percent should be 342 percent.

5 MS. BOJKO: Thank you.

6 Q. If I were to ask you each of the
7 questions that are contained in DP&L Exhibit 12,
8 would your answers be as stated there?

9 A. Yes.

10 Q. Are the answers true?

11 A. Yes.

12 MR. FARUKI: Your Honor, I offer DP&L
13 Exhibit 12 and we're also going to resolve I think
14 the motion to strike by withdrawing a portion which
15 Mr. Sharkey has a better note of than I do.

16 EXAMINER PRICE: Okay.

17 MR. SHARKEY: Yes, your Honor. Ms. Yost
18 had approached us about withdrawing a portion of the
19 testimony which starts on line 20 -- I'm sorry, on
20 page 21, line 6, with the word "additionally." We
21 would agree to withdraw from the word "additionally"
22 on line 6 down through line 10.

23 MS. YOST: Thank you, Jeff. Thank you,
24 company, and that does address my motion to strike.

25 MR. FARUKI: So as revised, your Honor,

1 then I would offer Exhibit 12, and the witness is
2 tendered for cross.

3 EXAMINER PRICE: Let's go off the record.
4 (Discussion off the record.)

5 EXAMINER PRICE: Let's go back on the
6 record.

7 Mr. Alexander.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Alexander:

11 Q. Good morning, Ms. Seger-Lawson.

12 A. Good morning.

13 Q. Could you please turn your attention to
14 page 3, line 5. At that line you reference "stable
15 and reliable service." Do you see that?

16 A. Yes.

17 Q. And your definition of "stable and
18 reliable service" as used in this line includes
19 financial stability, service reliability, and the
20 ability to attract capital; is that correct?

21 A. Yes, those are things that come to mind.
22 There may be others, I guess.

23 Q. And focusing on service reliability, you
24 believe that service reliability is a function of
25 more than just the generation -- let me rephrase that

1 question.

2 Focusing on service reliability, you
3 believe that service reliability is a function of
4 more than just the distribution function, it also
5 includes the transmission and generation functions.

6 A. Yes, that's correct.

7 Q. And you believe that the generation
8 function is part of stable service due to DP&L's
9 obligations as a load-serving entity in PJM.

10 A. I believe DP&L still owns its generation
11 and to the extent it provides generation to SSO load
12 customers, it has an obligation to provide stable and
13 reliable service for T, D, and G.

14 Q. And you believe that that obligation
15 arises from Dayton Power & Light's obligations as a
16 load-serving entity in PJM.

17 A. Yes.

18 Q. Would you agree that generators
19 participating in PJM have responsibilities to comply
20 with PJM requirements even when those generators are
21 not responsible for providing standard service offer
22 service to customers?

23 A. Yes, that's true. There's a reliability
24 on the generation side even if there wasn't a
25 load-serving obligation.

1 MS. BOJKO: I'm sorry, can you speak up,
2 I'm having troubling hearing you as well.

3 THE WITNESS: Yes.

4 MS. BOJKO: Thank you.

5 Q. Can you turn your attention to line 6,
6 please, staying on page 3, the words "financial
7 integrity" in particular. Do you see that?

8 A. I'm sorry, what line?

9 Q. Page 3, line 6, the words "financial
10 integrity."

11 A. Yes.

12 Q. You are relying on Mr. Jackson and
13 Mr. Chambers' analysis of DP&L's financial integrity
14 and you are not providing an independent analysis of
15 DP&L's financial integrity in this rebuttal
16 testimony, correct?

17 A. That's correct.

18 Q. At pages 6 to 7 you refer to the Duke
19 Energy Ohio and FirstEnergy utilities ESP proceeding
20 orders and certain, quote, "circuit breaker," end
21 quote provisions referenced in those orders; is that
22 correct?

23 A. Yes.

24 Q. And the FirstEnergy and Duke Energy Ohio
25 circuit breaker provisions do not apply to the same

1 types of costs which DP&L seeks to include in its
2 reconciliation rider, correct?

3 A. They are not exactly the same, but they
4 are very similar. The riders that we are seeking to
5 include in the 10 percent cap relate to the provision
6 of generation service just as Duke and FirstEnergy's
7 circuit breakers are related to provision of
8 generation service.

9 Q. I'd like to focus your attention on the
10 FirstEnergy rider that you reference which is the
11 generation cost rider, or GCR. Can we agree to refer
12 to that rider as rider "GCR"?

13 A. Okay.

14 Q. Now, rider GCR recovers the difference in
15 competitive bid generation costs incurred to serve
16 SSO load based on the results of a competitive bid
17 process which includes market based transmission and
18 auction costs; is that correct?

19 A. That's what I understand, yes.

20 Q. And the rider GCR recovers the difference
21 between the competitive bid generation costs and
22 rider GEN revenue.

23 A. Okay.

24 EXAMINER PRICE: When you say "okay," are
25 you saying --

1 THE WITNESS: I'm not an expert on
2 FirstEnergy's rates so I am assuming that he's
3 explaining the way that it works.

4 EXAMINER PRICE: Well, he can't testify,
5 so -- is that your understanding of what that rider
6 does or do you not know?

7 THE WITNESS: I don't know.

8 EXAMINER PRICE: Okay.

9 Q. (By Mr. Alexander) But you do know that
10 rider GCR is not the recovery mechanism for the
11 recovery of the costs of conducting the auction,
12 correct?

13 A. I thought that the GCR was recovery of
14 the results of the auction. And so, therefore, it's
15 the cost of generation service which would include
16 things such as FUEL, RPM, TCR-B, if those things are
17 provided in the auction.

18 Q. My question related to the auction costs,
19 the costs of conducting the auction itself. Those
20 costs are not included in rider GCR, correct?

21 A. I don't know.

22 Q. And you don't know whether or not rider
23 GCR includes renewable costs.

24 A. I don't know.

25 Q. And are Duke Energy in Ohio and the

1 FirstEnergy utilities the only utilities in Ohio
2 currently procuring power for their customers via a
3 competitive bid?

4 A. I don't know. I thought that AEP had
5 some aspect of competitive bid in their current rates
6 as well.

7 Q. Do you know whether the AEP competitive
8 bid is currently underway or is anticipated for a
9 future period?

10 A. I don't know.

11 Q. When Duke and the FirstEnergy utilities
12 went to 100 percent competitive bid and implemented
13 their circuit breaker riders referenced in your
14 testimony, the initial deferral balance associated
15 with each of those riders was zero; is that correct?

16 A. That's what I understand.

17 MR. ALEXANDER: Your Honor, I would like
18 to have an exhibit marked as FES Exhibit No. 15.

19 EXAMINER PRICE: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. ALEXANDER: Your Honor, with your
22 permission I'll just stand because I'm going to have
23 to come back up.

24 Q. Ms. Seger-Lawson, I've just handed you a
25 copy of what's been previously marked as FES

1 Exhibit 15. Is that the FirstEnergy utilities' rider
2 which you reference in your testimony?

3 A. Yes.

4 Q. And you relied on your view of this rider
5 when drafting your testimony.

6 A. Yes.

7 MR. ALEXANDER: Your Honor, I'd like to
8 have an exhibit marked as -- may I have an exhibit
9 marked, your Honor?

10 EXAMINER PRICE: You may.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 Q. Ms. Seger-Lawson, I've just handed you a
13 copy of a document which has been previously marked
14 for identification as FES Exhibit 16. Have you seen
15 this document before?

16 A. Yes.

17 Q. And is this the Duke Energy Ohio rider
18 which you rely on in your testimony?

19 A. Yes.

20 Q. And did you review this Duke Energy Ohio
21 rider when drafting your testimony?

22 A. Yes.

23 Q. Ms. Seger-Lawson, do you have a copy of
24 Witness Rabb's testimony with you?

25 A. Yes.

1 Q. And you adopted Witness Rabb's testimony;
2 is that correct?

3 A. Yes.

4 Q. Could you please turn to page 8, line 14
5 of Witness Rabb's testimony.

6 A. Okay.

7 Q. At this reference Witness Rabb states
8 that DP&L is comparing the reconciliation portion of
9 the true-up riders to 10 percent of the base recovery
10 rate, correct?

11 A. Yes.

12 Q. And now please turn to page 7, line 9 of
13 your testimony. Let me know when you're there.

14 A. Okay.

15 Q. At this reference your testimony states
16 that the deferral balances must exceed 10 percent of
17 the underlying costs; is that correct?

18 A. Yes. As we developed the rebuttal
19 testimony, I thought that that was a better way to
20 explain it.

21 Q. And it is now your testimony that DP&L's
22 proposal is to include in the reconciliation rider
23 anything over 10 percent of the underlying costs
24 rather than rate.

25 A. Yes. I think those are virtually the

1 same, it's just a question of where in the process do
2 you calculate it.

3 Q. And when you say DP&L is comparing to
4 10 percent of the rider's costs, that comparison is
5 to forecast costs for the next period rather than
6 actual costs from the previous period, correct?

7 A. It's forecasted costs but it may have
8 actuals in it too. I would have to look at each
9 rider to see how those schedules are trued up. There
10 may be a few months of actuals and then some
11 forecast.

12 Q. Are you differentiating in that response
13 the rider, for example, such as the TCRR which may be
14 on a different updating period than a rider which
15 would be updated quarterly?

16 A. I would have to look at the underlying
17 cost data to find out if it was all forecast or if
18 part of it was actual.

19 Q. Okay. But it's your belief that when
20 Dayton Power & Light is populating the reconciliation
21 rider, that that population will be done based off of
22 forecast costs.

23 A. Off of a deferral balance which is an
24 actual cost compared to what the forecasted cost is
25 for that coming up period. But what I'm saying is

1 that forecasted cost may include some level of
2 actuals in it.

3 Q. And the riders which form the Duke
4 Energy Ohio circuit breaker rider, which we have
5 marked as Exhibit 16, are based on actual costs
6 rather than forecast costs, correct?

7 A. Yes, that's what I understand.

8 Q. And you don't know whether the
9 FirstEnergy GCR rider costs are based on forecasted
10 or actual costs, correct?

11 A. I don't know.

12 Q. Right now there's an approximate
13 \$8 million TCRR deferral balance; is that correct?

14 A. Yes.

15 Q. In your testimony on the stand last week
16 you testified that the TCRR deferral balance would be
17 allocated between bypassable and nonbypassable
18 riders, correct?

19 A. Yes.

20 Q. And you believe that Witness Hale
21 addresses the methodology for allocating the deferral
22 balance into bypassable and nonbypassable components.

23 A. Yes. Witness Hale, I believe her only
24 topic was about the split between TCRR and -- TCRR-N
25 and B.

1 Q. Do you have a copy of Witness Hale's
2 testimony with you here today?

3 A. No, I don't.

4 MR. ALEXANDER: Your Honor, I'd like to
5 have an exhibit marked, please.

6 EXAMINER PRICE: You may.

7 Let's go off the record.

8 (Discussion off the record.)

9 EXAMINER PRICE: Let's go back on the
10 record.

11 MR. ALEXANDER: Your Honor, I'll withdraw
12 my request to have an exhibit marked.

13 EXAMINER PRICE: Okay.

14 Q. (By Mr. Alexander) Ms. Seger-Lawson,
15 you've just been handed a copy of DP&L Witness Hale's
16 prefiled direct testimony. Can you tell me where she
17 addresses how the deferral balance will be allocated
18 between the TCRR bypassable and nonbypassable
19 components?

20 A. I would --

21 MR. FARUKI: Your Honor, I'm going to
22 object to cross-examining this witness on someone
23 else's testimony.

24 EXAMINER PRICE: I don't think he's -- I
25 think your objection may be premature, so we're going

1 to overrule it. Let's just see how the questions go.

2 A. I would have to read it. I mean, I've
3 read it before, but I would have to read it word for
4 word to find out where that is.

5 Q. Okay. So you don't know where
6 specifically she addresses that point?

7 A. No, I don't.

8 Q. If I handed you a copy of the relevant
9 portion of Dayton Power & Light's rate blending plan,
10 do you believe you'd be able to determine how the
11 deferral balance in the transmission cost recovery
12 rider will be allocated?

13 A. I don't know that we went into that much
14 detail in the rate blending plan.

15 Q. Okay. So that would not be helpful?

16 A. I have a copy of the rate blending plan,
17 but I . . .

18 Q. Could you please -- strike that.

19 Are you aware of any specific language in
20 the rate blending plan which discusses how the
21 deferral balance in the transmission cost recovery
22 rider will be allocated?

23 A. I'd have to read it to see if it's in
24 there.

25 Q. So would you agree with me that you don't

1 know whether or not the proposal to split the
2 deferral balance in the transmission cost recovery
3 rider is addressed in DP&L's second revised
4 application?

5 A. I don't know.

6 Q. Now I'd like to address the cause of the
7 TCRR deferral balance. You believe the cause of the
8 TCRR deferral balance is a change in SSO load and a
9 variance between forecasted and actual costs.

10 A. Yes.

11 Q. Would you agree that the TCRR deferral
12 balance was created over a period of years?

13 A. I would have to review all the TCRR
14 filings to make that determination. I just looked at
15 the two years that are discussed in my testimony.

16 Q. For the two years discussed in your
17 testimony was there a beginning deferral balance in
18 2012?

19 A. Yes, there was.

20 Q. And your testimony at page 8 addresses
21 the recent changes in SSO load, correct?

22 A. Yes.

23 Q. And when calculating the TCRR rate, DP&L
24 estimated the projected costs to be recovered?

25 A. I'm sorry, I didn't hear the question.

1 Q. When calculating the TCRR rate, DP&L
2 estimated the projected costs to be recovered.

3 A. Yes.

4 Q. And after projecting costs, DP&L then
5 forecasted load to determine the TCRR rate.

6 A. Yes.

7 Q. And when creating the TCRR rate, DP&L
8 anticipated a change in SSO load over the year 2012.

9 A. I would have to go back and look at that
10 in the filing, but I believe so, yes.

11 Q. And you have not performed or sponsored
12 any analysis to determine whether or not DP&L
13 accurately forecast the change in SSO load which is
14 referenced on page 8 of your testimony?

15 A. Our TCRR filings are made at the
16 Commission and parties have an opportunity to
17 intervene and evaluate whether or not DP&L's
18 assumptions and forecasted load are accurate and
19 prudent, and the Commission staff reviews that.

20 So I think that there's a, clearly a
21 process to determine whether or not our forecast, our
22 forecasting costs in our forecasted load is accurate.

23 Q. My question related to the TCRR deferral
24 balance. And in your response you were addressing
25 how DP&L sets the TCRR rate; is that correct?

1 A. I thought your question was have we done
2 any analysis as to whether or not our forecast was
3 accurate. And my answer was I think everybody looks
4 at it and determines whether or not it's accurate.

5 Q. Well, they look -- okay. I understand
6 the distinction now.

7 You're saying that people look at the
8 forecast at the time it is filed, correct?

9 A. Yes.

10 Q. And my question related to has DP&L done
11 any analysis after the fact to determine whether or
12 not its TCRR forecast of load was accurate.

13 A. I think we have a mid-year check-in to
14 see if our rate is set appropriately and contact the
15 staff and we take another look at it.

16 Q. And you have not conducted any analysis
17 to determine why or if Dayton Power & Light
18 accurately forecast TCRR costs.

19 A. Again, I think that we look at it and the
20 Commission staff looks at it and whoever intervenes
21 in our case looks at it to determine whether or not
22 it's an accurate forecast.

23 Q. They look at it at the time it's filed by
24 the company, correct?

25 A. Yes.

1 Q. And I believe that you previously
2 testified one of the causes of the TCRR deferral
3 balance is a variance between projected costs and
4 actual costs, correct?

5 A. Yes, because there are a number of things
6 that happen at PJM over the course of a period of
7 time, and costs change.

8 Q. And it's not only relevant that costs
9 change, but that costs change in excess of that
10 projected by Dayton Power & Light.

11 A. Yes, costs can change beyond what's
12 projected.

13 Q. DP&L seeks to include rider AER in their
14 reconciliation rider?

15 A. Yes, only to the extent that that balance
16 exceeds 10 percent.

17 Q. And DP&L has a three-year backward
18 looking AER obligation?

19 A. Yes, that's correct.

20 Q. And DP&L has to provide a certain amount
21 of renewable resources to meet the statutorily
22 defined goal?

23 A. Yes.

24 Q. And the cost recovery for complying with
25 the state alternative energy goal is dependent on

1 DP&L's forecasted load for the period in which costs
2 will be recovered.

3 A. Yes.

4 Q. And CRES providers face the same
5 alternative energy obligation DP&L faces.

6 A. Yes. That's correct.

7 Q. And DP&L seeks to include rider AER in
8 the reconciliation rider because costs can be
9 incurred in period one, the customer could shop, and
10 then the costs would need to be paid in period two,
11 correct?

12 A. Yes. And I think that's more prevalent
13 for the utility because our load over the last three
14 years is higher and then declining and so we are
15 incurring growing balances, where a CRES provider's
16 load is probably low and growing so they're not
17 incurring deferral balances.

18 Q. Have you done any studies or analysis to
19 support that position?

20 A. No, that's just the -- I mean, if a CRES
21 provider is new to DP&L's service territory and
22 they're picking up customers as they go, their
23 balances -- or, their load is growing and therefore
24 their obligation is growing.

25 Q. Isn't it possible a CRES provider could

1 lose market share?

2 A. It's possible.

3 Q. And so for CRES providers who are losing
4 market share, they would be in the same position as a
5 utility, which is losing market share.

6 A. Yes, but a CRES provider can change their
7 price if their price is not set appropriately.

8 Q. And you believe that CRES providers
9 should forecast customer migration appropriately and
10 build that price -- build that migration into their
11 price to customers.

12 A. Yes.

13 Q. And isn't it true that if DP&L forecast
14 its load correctly, there would be no reason why
15 rider AER would ever have a deferral balance?

16 A. Yes, but I'm not sure how the company can
17 forecast switching any better than what it is.

18 Q. Could you please turn your attention to
19 page 7, line 17 of your rebuttal testimony. My
20 question relates to the first sentence of this
21 response. Could you please read it to yourself and
22 let me know when you've done so.

23 A. I'm sorry. What line are you on?

24 Q. Line 17 of page 7.

25 A. Okay.

1 Q. You intended this sentence to relate to
2 Staff Witness Donlon's testimony, correct?

3 A. That's what I had in mind when I wrote
4 it. I think Staff Witness Donlon was suggesting that
5 we wait until we get to a hundred percent competitive
6 bid until we do something, and what this Q and A is
7 relating to is why, basically why we should do
8 something now.

9 Q. I'd like to leave Mr. Donlon's testimony
10 to the side for a moment.

11 You believe that the creation of the
12 reconciliation rider benefits shopping customers
13 through inclusion in the reconciliation rider of
14 auction costs and competitive retail enhancements.

15 A. I'm sorry, I didn't hear your question.

16 MR. ALEXANDER: Could you please repeat
17 it.

18 EXAMINER PRICE: Please.

19 (Record read.)

20 A. That's correct.

21 Q. Isn't it true that auction costs and the
22 costs associated with competitive retail enhancements
23 could be recovered separately from the other costs
24 which are included in the reconciliation rider?

25 A. Yes, it's possible.

1 Q. Is there any deferral balance currently
2 in place for auction costs?

3 A. Yes, we have some costs that we've
4 deferred relating to the competitive bid.

5 Q. Would those costs be associated with the
6 testimony which was submitted in this proceeding?

7 A. No, it's relating to getting ready to
8 conduct the competitive bid, the groundwork.

9 Q. Is there any -- strike that.

10 With regard to the deferred costs you
11 just referenced, do you have an estimate as to the
12 amount of those costs?

13 A. I don't know off the top of my head.

14 Q. And is there any current deferral balance
15 for competitive retail enhancements?

16 A. No, there's not.

17 Q. You believe that the level of shopping is
18 determinative as to whether the DP&L, FirstEnergy, or
19 Duke circuit breaker provisions will be triggered,
20 correct?

21 A. Yes.

22 Q. And you would agree that the relevant
23 determination is not how much raw shopping there is
24 but how much shopping there is in excess of that
25 projected by the utility?

1 A. Yes.

2 Q. If Dayton Power & Light forecasts costs
3 and load accurately, will there ever be a deferral
4 balance for auction costs or retail enhancements?

5 A. Yes, there could be. If the costs were
6 not the same as what they were projected to be.

7 Q. So that would be a situation where DP&L
8 did not forecast costs accurately, correct?

9 A. Yeah. Or something unexpected happens
10 and incurs a cost that wasn't foreseen.

11 Q. I asked you to leave Staff Witness
12 Donlon's testimony to the side for a moment. I'd
13 like to turn our attention back to that. You
14 understand that Staff Witness Donlon recommends
15 continued bypassable cost recovery for some of the
16 reconciliation rider components with a potential
17 change at a later date?

18 A. That's what I understand.

19 Q. And if DP&L forecasts costs and load
20 accurately, DP&L, under Staff Witness Donlon's
21 proposal, would fully recover all of its costs
22 through bypassable riders.

23 A. That's assuming there aren't any
24 unforeseen costs that we were incurring from PJM
25 related to the RPM rider, TCR-B, all of those things

1 are subject to PJM costs that we would incur on
2 behalf of customers that we're serving.

3 Q. So you would agree that if DP&L
4 accurately forecasts costs and load, that it will
5 fully recover its riders in their bypassable format
6 but DP&L may not fully recover its costs if its
7 forecast encounters unexpected difficulties.

8 A. Yes. As I understand it, you know, we
9 receive a PJM bill every month and we go through it
10 as we calculate the TCRR and there's always changes
11 and always things that are different. New line
12 items. I don't think that anyone can predict what
13 PJM costs are going to be in the future with a
14 hundred percent accuracy.

15 Q. If a customer leaves DP&L service, say by
16 moving out of the service territory, is DP&L allowed
17 to charge that customer an exit fee to recover the
18 costs DP&L has incurred to serve that customer but
19 not yet fully recovered?

20 A. No.

21 Q. And CRES providers are at risk if they
22 incur costs to serve customers who subsequently leave
23 CRES service to go to another provider.

24 A. Yes, but, again, they can build that into
25 their price. They can build in a risk premium if

1 they so choose; the company cannot.

2 Q. But CRES providers can only charge their
3 generation customers, correct?

4 A. Yes, that's correct.

5 Q. And CRES providers cannot levy
6 nonbypassable charges on customers who do not take
7 generation service from them, correct?

8 A. They can't, but they can impose a
9 nonbypassable charge on their own customers if they
10 so choose because their prices are not regulated.

11 Q. I didn't quite catch that.

12 MS. BOJKO: Can you read the answer back,
13 please?

14 EXAMINER PRICE: Please.

15 (Record read.)

16 (Discussion off the record.)

17 Q. With regard to the TCRR, the size of the
18 TCRR deferral alone is enough to trigger some portion
19 of those costs into the reconciliation rider on the
20 first day the proposed ESP is accepted, correct?

21 A. Yes, that's correct.

22 Q. Please turn your attention to page 10 of
23 your testimony, line 9.

24 A. Okay.

25 Q. Here you reference the reconciliation

1 rider will be recovered under a, quote, "appropriate
2 period of time," end quote. Dayton Power & Light has
3 not proposed a period of time under which the
4 reconciliation rider balances will be recovered; is
5 that correct?

6 A. That's correct. It would depend on the
7 size of the -- the amount that is being moved to the
8 reconciliation rider.

9 Q. And DP&L anticipates another proceeding
10 to determine how the reconciliation rider costs will
11 be charged to customers.

12 A. Yes, I think we would need to file our
13 proposal and parties would be able to review it and
14 determine whether or not that's appropriate.

15 Q. And DP&L anticipates that the period of
16 time over which the reconciliation rider will be
17 recovered may change.

18 A. Yes.

19 Q. Under DP&L's proposal, once the 10
20 percent reconciliation rider threshold has been met
21 for a particular rider, the overage above 10 percent
22 would be moved to the reconciliation rider and be
23 recovered on a nonbypassable basis until it goes to
24 zero, correct?

25 A. That's correct.

1 Q. And you don't know whether or not this
2 methodology is consistent with the circuit breaker
3 provisions you cited for FirstEnergy and Duke.

4 A. That's correct.

5 Q. And in your testimony you compare the 5
6 percent threshold of the FirstEnergy mechanism to
7 the 10 percent threshold for the reconciliation rider
8 in this case, correct?

9 A. I was trying to find that in my
10 testimony. Oh, here it is.

11 Yes, what I say in my testimony is that I
12 think that DP&L's proposal is -- I'm not sure what
13 the word was that I used -- moderate, more moderate
14 because we're only moving the portion that exceeds
15 the 10 percent. We're not making the entire rider
16 nonbypassable. Whereas in FirstEnergy and Duke the
17 entire rider becomes nonbypassable.

18 Q. And for the FirstEnergy and Duke riders
19 the deferral balance is compared to the total SSO
20 cost and total SSO revenue, correct?

21 A. I thought it was the amount of cost from
22 the competitive bid is what I thought.

23 Q. Okay. And it's your understanding that
24 the denominator for, for example, the FirstEnergy
25 circuit breaker provision would be what?

1 A. The total cost of the competitive bid.

2 Q. And what would the numerator of the

3 FirstEnergy circuit breaker provision be?

4 A. The costs that they're trying to recover
5 that's unrecovered.

6 Q. Would that be rider GEN, I believe?

7 A. I'm not sure.

8 Q. Would you agree that DP&L's proposed
9 threshold is more likely to be met than either the
10 FirstEnergy or Duke Energy Ohio thresholds since the
11 current deferral balances will meet the threshold
12 immediately upon the Commission acceptance of DP&L's
13 proposal?

14 A. I think that's true only for TCRR. The
15 TCRR balance is above 10 percent, but I would have to
16 look at the other riders. I don't think that any
17 other riders are above 10 percent.

18 Q. But you don't know for sure one way or
19 another?

20 A. I'd have to go back and look at them.

21 Q. And leaving the deferral balance aside,
22 would you agree that DP&L's proposed threshold is
23 more likely to be met than the FirstEnergy and Duke
24 Energy Ohio thresholds due to the relative magnitude
25 of the costs being recovered under the applicable

1 riders?

2 A. It would be a function of the cost as
3 well as the level of switching, so to the extent that
4 they have a significant amount of switching from SSO
5 load from when they incurred the cost to when they're
6 trying to recover it, that's what's going to drive
7 whether or not you're going to hit the target or not.

8 Q. And when you say "switching," you're
9 referring to switching in excess of that projected by
10 the utility?

11 A. Yes.

12 Q. So with that clarification, do you
13 believe the sheer size of the FirstEnergy and Duke
14 riders at issue make them less likely to be triggered
15 than the DP&L reconciliation rider threshold?

16 A. No. Ten percent is 10 percent.

17 Q. Ms. Seger-Lawson, I'd like to ask you
18 about your answer which starts on page 11 and goes on
19 to page 12 relating to Revised Code
20 4928.143(B) (2) (c). Do you have a copy of that
21 statute with you on the stand?

22 A. Yes, I do.

23 Q. I'd like to focus your attention on the
24 words "resource planning" in that statute. Do you
25 see that?

1 A. One second.

2 Q. It's also underlined in your testimony at
3 page 11, line 19, if that would be helpful.

4 A. Okay.

5 Q. Are you there?

6 A. Yes.

7 Q. You believe that the words "resourced
8 planning" contained in this portion of the statute
9 refer to the actual long-term forecast report which
10 is submitted by the electric distribution utility
11 rather than to any projections which would be
12 included in the long-term forecast report, correct?

13 A. I believe the section of the code as
14 related to resource planning and that's as it was
15 interpreted by the Commission in establishing its
16 rules under the Ohio Administrative Code.

17 This is Ohio Administrative Code
18 4901:1-35-03 relating to what's included in ESP. It
19 states that the need for the facility must have
20 already been reviewed and determined by the
21 Commission through an integrated resource planning
22 process as filed by 4901:5-5-05.

23 So my interpretation of the section of
24 the Ohio Revised Code is the same as the Commission's
25 interpretation when it developed the rules for that

1 section.

2 Q. So your answer was yes with that
3 explanation?

4 A. I'm sorry, I don't remember what the
5 question was at this point. Could I have the
6 question reread.

7 EXAMINER PRICE: Why don't you rephrase
8 that question as a "yes" or "no" one and she'll
9 answer "yes" or "no."

10 Q. Ms. Seger-Lawson, you believe that the
11 words "resource planning" contained in
12 4928.143(B)(2)(c) reference the long-term forecast
13 report which is submitted by the utility, correct?

14 A. Yes.

15 Q. You have never worked as a resource
16 planner.

17 A. No.

18 Q. You have never performed load forecasts.

19 A. No.

20 Q. Have you ever performed a load forecast
21 before?

22 A. I think you just asked me that. No.

23 Q. And you do not believe that the words
24 "resource planning" are intended to include resources
25 needed to comply with Ohio's renewable energy

1 benchmarks.

2 A. No. I think resource planning relates to
3 the company's long-term forecast report and
4 integrated resource plan as set forth in the
5 Commission rules.

6 Q. And you don't know whether DP&L would be
7 able to meet its SSO forecasted total electricity
8 demand over the next ten years without Yankee Solar.

9 A. I think that the company can meet its
10 generation -- its obligations to serve customers with
11 its generation, but I do believe the Commission found
12 that there was a need for Yankee Solar in the 2010
13 long-term forecast report.

14 Q. Thank you for that, but my question was:
15 Can DP&L meet its SSO forecasted total electricity
16 demand for the next ten years without Yankee Solar?

17 MR. FARUKI: I'll object. Asked and
18 answered.

19 EXAMINER PRICE: Overruled.

20 A. Yes, I believe we can.

21 Q. And Yankee Solar constitutes a very small
22 percentage of DP&L's total generation portfolio.

23 A. Yes.

24 Q. It's a 1.1 megawatt facility?

25 A. Yes, that's correct.

1 Q. And it's got approximately a 14 percent
2 capacity factor?

3 A. That's correct.

4 Q. If the Yankee Solar Facility were taken
5 away, would DP&L still be able to purchase capacity
6 from the PJM RPM market?

7 A. Yes.

8 Q. And you have never compared the cost of
9 Yankee Solar for energy and capacity with the cost of
10 a new fossil fuel facility, correct?

11 A. No, but there's no need to because the
12 Commission has already found a need for the facility
13 in the long-term forecast report.

14 Q. Under typical resource planning methods a
15 regulated utility would acquire lower cost resources
16 before acquiring higher cost resources, correct?

17 A. In a regulated environment, yes.

18 Q. Is Yankee Solar a least-cost generation
19 resource as you understand the term?

20 A. I don't know.

21 Q. And you referenced two or three answers
22 ago that you believe the Commission has already
23 determined a need for the Yankee Solar Facility; is
24 that correct?

25 A. That's correct. That's what they stated

1 in the order.

2 Q. And you believe that that determination
3 was made in DP&L's 2010 LTFR proceeding?

4 MR. FARUKI: Objection. Asked and
5 answered.

6 EXAMINER PRICE: Overruled.

7 A. On page 5 of the Commission's order dated
8 April 19th, 2011, in Case No. 10-505-EL-FOR,
9 paragraph 11, it states "There is a need for a 1.1
10 megawatt solar generating facility known as Yankee 1
11 for additional solar generation facilities during the
12 LTFR planning period."

13 Q. So my question was do you believe the
14 determination was made in DP&L's 2010 LTFR filing, it
15 sounds like the answer is yes.

16 A. Yes.

17 Q. And do you have a copy of the Commission
18 order in the 2010 LTFR proceeding with you on the
19 stand?

20 A. Yes.

21 Q. Do you have a copy of DP&L's 2010 LTFR
22 application with you on the stand?

23 A. No.

24 Q. Let me rephrase that because I think I
25 misspoke.

1 Do you have a copy of DP&L's 2010
2 long-term forecast report with you on the stand?

3 A. No.

4 Q. Were you involved in DP&L's 2010 LTFR
5 proceeding?

6 A. Yes. I think you asked me that a couple
7 days ago when I was on the stand.

8 Q. I did.

9 And did DP&L present any evidence in this
10 proceeding that Yankee Solar was the least-cost solar
11 resource available to meet Ohio's renewable energy
12 benchmarks?

13 THE WITNESS: Could I have that question
14 read back?

15 (Record read.)

16 MR. ALEXANDER: Your Honor, I'd like to
17 withdraw the question.

18 EXAMINER PRICE: Okay.

19 Q. Did DP&L present any evidence in the 2010
20 LTFR proceeding that Yankee Solar was the least-cost
21 solar resource available to meet Ohio's renewable
22 energy benchmarks?

23 A. I'd have to look through the filing. I
24 don't know.

25 Q. Is there any analysis in the Commission

1 order which you brought with you to the stand
2 regarding whether or not Yankee Solar is a least-cost
3 resource?

4 A. No, but I don't believe that's required
5 by the Ohio Revised Code. It's not one of the things
6 that's listed.

7 Q. Isn't it true that Yankee Solar was
8 completed before the Commission's acceptance of the
9 2010 LTFR stipulation?

10 A. Yes.

11 Q. And, in fact, isn't it true that DP&L had
12 completed construction of Yankee Solar before even
13 filing its 2010 long-term forecast report?

14 A. There was a need at the time to -- when
15 the company built Yankee, there was insufficient RECs
16 in Ohio -- insufficient solar RECs in Ohio. The
17 Commission found that there were insufficient solar
18 RECs on a number of cases and the company was the
19 only company that stepped up and built the Yankee
20 Solar Facility, built it very quickly as such that it
21 was up and operating so that we could meet targets.

22 Q. My question was --

23 MS. BOJKO: But, your Honor, I move to
24 strike the response as nonresponsive to the question.

25 EXAMINER PRICE: Let's have the question

1 back, not the answer but the question.

2 (Record read.)

3 EXAMINER PRICE: The motion to strike
4 will be granted.

5 Please make sure you listen to counsel's
6 question and answer only the question, and I'm sure
7 if there's any additional information you think the
8 Bench needs to know, Mr. Faruki will ask you about it
9 on redirect.

10 MS. BOJKO: Thank you, your Honor.

11 Q. (By Mr. Alexander) Isn't it true that
12 DP&L had completed construction of the Yankee Solar
13 Facility before filing its 2010 long-term forecast
14 report?

15 A. Yes.

16 Q. Moving on to a different subject. Is
17 DP&L's -- strike that.

18 DP&L's consolidated billing system is
19 able to calculate the dollars which a customer would
20 owe on a percent-off price-to-compare basis for
21 rate-ready billing, correct?

22 A. Rate-ready billing is when a CRES
23 provider calculates their own charges and provides
24 them to the company, and the company can implement
25 rate-ready billing if the CRES provider calculates

1 its own percentage off price-to-compare and provides
2 that to the company, yes.

3 Q. Do you believe that it's in the
4 customers' best interests to get a bill that's
5 calculated accurately?

6 A. Yes.

7 Q. DP&L does not allow supplier consolidated
8 billing, correct?

9 A. No.

10 Q. No, DP&L does not allow supplier
11 consolidated billing?

12 A. No, it does not.

13 Q. Thank you.

14 So DP&L has to send every customer a bill
15 whether the customer is shopping or not.

16 A. Yes. DP&L sends its customers a bill and
17 those bills may include generation service and may
18 not. We have dual billing, so a CRES provider could
19 issue their own bill to customers if they so choose.

20 Q. But in the dual billing situation DP&L
21 would still be issuing a bill to the customer.

22 A. That's correct.

23 Q. And every DP&L customer takes
24 distribution service from the company, correct?

25 A. Yes.

1 Q. And DP&L charges customers for
2 distribution service.

3 A. Yes.

4 Q. DP&L recovers the incremental and O&M
5 costs of issuing its bills to SSO customers through
6 distribution charges, correct?

7 A. The cost of billing was built into DP&L's
8 last distribution rate case, as we discussed at
9 length the other day; however, significant costs have
10 changed since the 1991 rate case. So if your
11 question is are we recovering all of our costs
12 through distribution rate case -- through
13 distribution rates, I would say no.

14 Q. More accurately, you would say you don't
15 know, correct?

16 A. I would say no.

17 Q. Have some costs increased since 1991?

18 A. Yes.

19 Q. Have some costs decreased since 1991?

20 A. Yes.

21 Q. For example, computer systems can now
22 conduct mail merges and create envelopes and do all
23 that with minimal human interaction, correct?

24 A. I would say that, yeah, O&M costs have
25 probably decreased and I would say capital costs have

1 probably increased to do all of those things.

2 Q. And have you personally reviewed or
3 conducted any analysis which shows whether or not
4 DP&L's distribution charges compensate it for issuing
5 bills to customers?

6 A. I have not.

7 Q. Would a bill sent by DP&L to a shopping
8 customer be known as a consolidated bill?

9 A. Or a dual bill; yes.

10 Q. Or a dual bill. I'd like to focus on
11 consolidated bills --

12 A. Okay.

13 Q. -- for the moment.

14 DP&L's costs, I believe you testified
15 last week, are approximately 35 cents per
16 consolidated bill?

17 A. Yes. That's for the incremental O&M.

18 Q. And DP&L charges CRES suppliers 20 cents
19 per consolidated bill.

20 A. Yes.

21 Q. And DP&L recovers the incremental and O&M
22 costs for rendering a consolidated bill through
23 distribution charges in the same manner it recovers
24 those costs for issuing a bill to SSO customers.

25 A. Yes, but, again, I don't believe that we

1 are fully recovering our costs through distribution
2 rates because things have significantly changed over
3 the years and we haven't reset our distribution rates
4 since 1991.

5 Q. So even though DP&L collects incremental
6 and O&M costs associated with billing in the exact
7 same manner from consolidated bill customers and SSO
8 customers, it does not return the 20 cents per bill
9 charge it receives from CRES providers to customers.

10 A. No, because rates are set at a point in
11 time and from that point everything changes; you've
12 got different customers, you've got different usage
13 amounts, you've got different costs. You can't look
14 to say, okay, that cost is being covered exactly in
15 our rates.

16 Q. And you believe that suppliers would pass
17 their billing costs on to their customer, and by
18 "suppliers" I'm referring to CRES providers.

19 Let me rephrase the question so the
20 record is clear.

21 You believe that CRES providers would
22 pass their billing costs on to customers, correct?

23 A. Yes, I do.

24 Q. And so if a shopping customer is paying
25 DP&L for billing costs which are not offset by

1 supplier consolidated bill revenues, and a customer
2 is also paying for the CRES provider's billing
3 costs -- I'd like to withdraw that question and start
4 over.

5 EXAMINER PRICE: You may.

6 Q. If a shopping customer is paying DP&L for
7 billing costs which are not offset by supplier
8 consolidated bill revenues and a customer is also
9 paying for a CRES provider's billing cost, wouldn't
10 that customer be paying 55 cents for a 35-cent bill?

11 A. Again, it's not clear as to whether or
12 not those costs are being recovered through
13 distribution rates because we haven't had a
14 distribution rate case since 1991 and many things
15 have changed since then. And, therefore, I can't say
16 with certainty that DP&L -- that billing costs are
17 being recovered through distribution rates.

18 Q. But what we can say with certainty is the
19 shopping customer is paying the same distribution
20 charges as imposed on nonshopping customers.

21 A. Yes, that's correct.

22 Q. And we can say with certainty that CRES
23 providers are being charged 20 cents per consolidated
24 bill.

25 A. Which is not significant enough to cover

1 our cost of issuing that bill.

2 Q. So was that a yes?

3 A. Yes.

4 Q. Please turn your attention to page 23.

5 EXAMINER PRICE: Ms. Seger-Lawson.

6 THE WITNESS: Yes.

7 EXAMINER PRICE: You keep indicating that
8 you have not had a distribution rate case since 1991.
9 There's not been any restriction on a distribution --
10 change in your distribution rates since they were
11 issued this year; is that correct? Your rate case --

12 THE WITNESS: I'm not sure.

13 EXAMINER PRICE: You're not sure?

14 THE WITNESS: Because I would have to go
15 back to the Commission's order that extended our
16 current rates as to whether or not did it just extend
17 our current rates or did it extend all aspects of our
18 ESP stipulation.

19 EXAMINER PRICE: Okay. Fair enough.

20 Thank you, Mr. Alexander.

21 Q. (By Mr. Alexander) Ms. Seger-Lawson,
22 could you please turn your attention to page 23, in
23 particular lines 10 to 11.

24 A. Okay.

25 Q. This sentence here states, quote,

1 "Second, the nonbypassable nature of the SSR means
2 that it relates to bypassability." Do you see that
3 language?

4 A. Yes.

5 Q. Would a bypassable rider also relate to
6 bypassability?

7 A. Yes.

8 Q. So under the logic contained in that
9 sentence, any rider could arguably satisfy the
10 requirements of this statute, correct?

11 A. I don't know about "any rider." I don't
12 know.

13 Q. Focus your attention on line 16. You
14 testify that the SSR will help the company to provide
15 stable, safe, and reliable electric service. Do you
16 see that?

17 A. Yes.

18 Q. When you reference "service," you are
19 referring to distribution, transmission, and
20 generation service, correct?

21 A. Yes, that's correct.

22 MR. ALEXANDER: Nothing further. Thank
23 you very much.

24 EXAMINER PRICE: Thank you.

25 Ms. Yost.

1 MS. YOST: Your Honor, Mr. Petricoff is
2 going to go next if that's okay. I have an exhibit
3 on its way.

4 EXAMINER PRICE: That will be just fine.
5 Mr. Petricoff.

6 MR. PETRICOFF: Thank you, your Honor.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Petricoff:

10 Q. Good morning, Ms. Seger-Lawson.

11 A. Good morning.

12 Q. If you would, I'd like you to turn to
13 page 6 of your testimony, line 4. Here we're
14 discussing the items -- here in your testimony you
15 are discussing the items that go into the
16 reconciliation rider. And on line 4 we have the
17 contingency where several riders that you are
18 collecting now may become nonbypassable and go
19 through the reconciliation rider. Do you see where
20 I'm referring to on line 4?

21 A. Yes.

22 Q. Okay. I want to talk about those riders
23 individually with you. The first one is FUEL and
24 those are fuel costs for standard service offer
25 customers?

1 A. Yes. Fuel, purchased power, and emission
2 fees.

3 Q. And a shopping customer would basically
4 not receive basically generation or purchased power
5 under the standard -- I'm sorry. Let me strike that.

6 A shopping customer would not receive any
7 energy from Dayton Power & Light because they would
8 be receiving their energy from a competitive retail
9 electric supplier?

10 A. Assuming that shopping customer was not
11 previously served by the SSO load at the time when
12 the fuel costs were incurred, yes.

13 Q. And the same would be true for RPM?

14 A. Yes.

15 Q. And the same would be true for the TCRR?

16 A. Yes.

17 Q. And the same would be true for the rider
18 AER and CBT.

19 A. Again, AER is a calculation based on the
20 previous three years, so that would be true as long
21 as that shopping customer wasn't previously receiving
22 service under SSO during the last three years.

23 Q. But if I'm a CRES customer, isn't it true
24 that the CRES would have to provide alternative
25 energy credits to cover whatever the statutory

1 percentage of my load is?

2 A. Yes.

3 Q. And Dayton Power & Light would not have
4 to supply any alternative energy credits for my load
5 if I'm a shopping customer.

6 A. DP&L may have to provide renewable energy
7 credits because of the three-year rolling average.
8 So if that customer, let's say the last three years,
9 we're here in '13 and we're looking back at '12, '11,
10 and '10, if that customer was an SSO customer during
11 '10 and '11, they're still in a calculation under
12 which DP&L is required to meet the renewable targets.

13 Q. Let's go down one more level of detail.
14 Dayton Power & Light has to turn a report in to the
15 Public Utilities Commission on April 15th of every
16 year indicating what their baseload was in the
17 previous year and where the renewable energy credits
18 came from to match the statutory requirements for
19 that baseload.

20 A. Baseload is for the last three years, but
21 yes.

22 Q. It's an average of the last three years.

23 A. It's an average of the last three years.

24 Q. Right. And so, basically, the planning
25 and the purchasing by Dayton Power & Light of

1 alternative energy credits would be based on that
2 obligation.

3 A. Yes.

4 Q. And that would be true for a competitive
5 retail electric supplier.

6 A. Yes.

7 Q. So if, for example, supplier ABC
8 basically attracts a customer away from a CRES
9 supplier EFX, EFX would have the same averaging
10 problem that you're concerned about DP&L would have
11 and basically there would be a future obligation for
12 the CRES supplier in terms of renewable energy
13 credits for each individual calendar year.

14 A. I'm sorry, I think I got lost in the --

15 Q. So did I. Let's start again on this.

16 Every supplier, whether it's a electric
17 distribution utility or a CRES, follows the same
18 rules in terms of how many renewable energy credits
19 they must turn in every year or show ownership for
20 every year to the Public Utilities Commission,
21 correct?

22 A. Yes.

23 Q. And because of the three-year averaging,
24 it may or may not match up exactly with what their
25 current customer load was for the calendar year.

1 A. That's correct. I would say that the
2 utility has a larger obligation and the CRES provider
3 has a smaller obligation.

4 Q. But that won't be true necessarily two
5 years from now.

6 A. It depends on the load of both entities.

7 Q. Right. And, well -- that's fine. I
8 think that's a suitable answer.

9 But today for shopping -- for shopping
10 customers, as far as they're concerned all of their
11 energy needs, including the alternative energy
12 credits, are being met by their competitive retail
13 electric suppliers.

14 A. Yes.

15 Q. Now, as I understand your proposal, for
16 each one of these five riders, if a threshold is
17 crossed in which the deferral is more than 10 percent
18 of the cost, everything above that level would then
19 be put into rider RR and be nonbypassable.

20 A. That's correct.

21 Q. Okay. And the rationale for having this
22 10 percent triggered threshold is the death spiral.

23 A. Yes. As the company has fewer and fewer
24 SSO customers and it's not recovering its costs,
25 let's say the first year, and then they still have

1 the same amount of cost and they've got fewer
2 customers that they're spreading that cost over, that
3 rate becomes higher and higher, and I think at some
4 point the rate is too high for the remaining
5 customers.

6 Q. The company did not submit any studies or
7 expert testimony to prove that the death spiral
8 phenomena exists in this proceeding; isn't that
9 correct?

10 A. I think that's what my testimony says --

11 Q. No, you indicate that there --

12 A. -- on page 8.

13 Q. -- there may have been a death spiral,
14 but you provided no studies that show at what
15 level -- actually, let me strike that.

16 Let's go back and see if we can agree on
17 a definition of "death spiral." Is a fair definition
18 of "death spiral" one in which the decrease in the
19 number of units sold increases the cost because --
20 increases the unit costs because of fixed costs and
21 as the -- well, let me see if I can make this even
22 simpler.

23 Well, first of all, let's see if there's
24 a better product out there. Do you have a good
25 definition of what the death spiral is?

1 A. I think it's actually explained in Rabb's
2 testimony.

3 Q. Okay.

4 A. Maybe it's not. I don't see it in there.
5 I don't see it in there, I'm sorry.

6 Q. In that case, let's see if we can work
7 one out together. A death spiral is one in which,
8 because of decreasing sales, the price per unit in
9 order to cover the cost of that unit increases and,
10 therefore, it becomes more difficult to sell units.

11 A. I don't know that it's the concern about
12 more difficult to sell units. I think the concern
13 is, is that you've got true-up riders that are
14 bypassable and you've got a market, market prices are
15 lower than DP&L's current rates, and you have more
16 customers switching, and so if you don't quickly
17 recover the cost that those customers that are on SSO
18 load cause the company to incur from those customers
19 before they leave, you've got a growing deferral
20 balance.

21 Q. Okay.

22 A. And that growing deferral balance, if
23 it's built back into the rate and spread across fewer
24 customers, then that rate increases and the company
25 never recovers its costs and the customers incur

1 rates that are much higher than what they should be.

2 Q. Well, I understand that that's your
3 position. Right now I'm trying to put on the record
4 this phenomenon of death spiral so it's
5 understandable and then compare to see whether or not
6 these particular tariffs are susceptible to a death
7 spiral.

8 So with that in mind let's look at this
9 first one: Fuel. Normally there shouldn't be --
10 normally the amount of fuel that you buy should be
11 the amount of fuel that you sell if you are a
12 provider, be you a CRES provider or an EDU provider.

13 A. If the intent is to recover all of the
14 costs from the customers that cause the cost to be
15 incurred.

16 Q. You're making things more difficult. I'm
17 trying to just narrow down on fuel. Normally, in
18 your FUEL rider, you just recover the cost of the
19 fuel that you are planning on selling, correct?

20 A. You're recovering costs that are
21 unrecovered from a previous period and you're
22 recovering costs that are forecasted based on
23 forecasted load, both.

24 Q. And I think you went through this with
25 Mr. Alexander, that if your forecasts are always --

1 if your forecasts are correct, then basically the
2 expenses and the revenues should match.

3 A. Yes.

4 Q. And so basically fuel, if you will, is a
5 variable cost because you only have to buy the amount
6 of fuel that you're going to sell, and if you sell
7 less and you buy less, you will not have a revenue
8 problem.

9 A. It depends on what happened in the
10 previous period. You may already have a revenue
11 period if in your previous period you incurred costs
12 and didn't recover them.

13 Q. We'll limit it to the previous period. I
14 just want to -- right now, if your forecasted
15 purchases -- if your forecasted purchases and your
16 forecast sales match up for fuel, because fuel is a
17 variable cost component, we shouldn't have a
18 shortfall.

19 A. We shouldn't have a shortfall? I didn't
20 follow that.

21 MR. DARR: I'm sorry, I couldn't hear
22 that answer at all.

23 (Record read.)

24 MR. DARR: Thank you.

25 Q. Fuel's a variable cost, not a fixed cost,

1 correct?

2 A. Yes.

3 Q. Okay. And when we're talking about
4 "death spirals," we're talking about a situation in
5 which decreasing sales cause increases in prices
6 because of fixed costs.

7 A. I don't think so. I disagree with that.

8 Q. You don't agree with that --

9 A. No.

10 Q. -- as a definition of a death spiral.

11 A. No. What I -- my definition of a "death
12 spiral" is you have costs you're trying to recover
13 from the cost causers and as cost causers leave
14 before you recover that cost from them, so you have a
15 growing deferral balance that you're trying to
16 recover, then, over fewer customers in the future.

17 Q. Well then if that's the case, shouldn't
18 you have proposed some type of exit fee in order to
19 get back from the customers who cause that -- who
20 cause that cost that you didn't collect for?

21 A. We could have proposed many things, but
22 what we proposed is the 10 percent circuit breaker
23 provision because it is similar to a circuit breaker
24 provisions in other utilities' cases and we think
25 ours is more moderate because it doesn't make the

1 entire charge nonbypassable, only the piece that's
2 above 10 percent.

3 Q. Yes. But if you exercise the circuit
4 breaker, you're going to be charging people who did
5 not get fuel for past fuel use?

6 A. You may be, but you may also be charging
7 customers who incurred the costs but then switched
8 and now they're paying their fair share.

9 Q. And it's okay to be indiscriminate as to
10 who's paying it as long as the company collects it.

11 MR. FARUKI: I'll object, argumentative.

12 EXAMINER PRICE: Sustained.

13 Q. Your proposal does not have the precision
14 to try to assign the cost to the cost causer for
15 customers who have shopped and continue to shop.

16 A. With any regulated rate you incur costs
17 over a time period and you try to recover that cost
18 from the customers that are during that time period.
19 That doesn't always match up and, therefore, we have
20 deferral balances.

21 Q. If a customer has -- well, never mind.
22 Let's move on.

23 We have identified that fuel is a --

24 EXAMINER PRICE: Mr. Petricoff, before
25 you move on from this topic.

1 You've been at the hearing almost every
2 day that I can think of, if not almost --

3 THE WITNESS: Right.

4 EXAMINER PRICE: -- 99.9 percent of the
5 time.

6 You were here for some of the testimony
7 about simply applying the reconciliation rider to
8 customers for some period of time after they
9 switched. Does the company have the technological
10 ability to track and implement something like that?

11 THE WITNESS: No. Customers come and go
12 at various times. They could be shopping with a CRES
13 provider, they could come back to standard service
14 offer for a month, two months, three months, and then
15 leave again. We would have to track what they used,
16 what the cost was at that time; it would be very
17 complex in order to do that.

18 EXAMINER PRICE: And your computer system
19 cannot manage that task.

20 THE WITNESS: No.

21 EXAMINER PRICE: Thank you,
22 Mr. Petricoff.

23 Q. (By Mr. Petricoff) We've identified FUEL
24 as a variable cost. Is RPM a variable cost as well?

25 A. Yes.

1 Q. And the same for the PJM transmission
2 cost?

3 A. Yes.

4 Q. Now, if you could, let's switch over to
5 page 8 and look at Mr. Donlon's suggestion and your
6 response to his proposal.

7 If, in fact, the Commission accepts
8 Mr. Donlon's proposal and we -- and any remaining
9 deferred balances for the riders, RPM, CBT, FUEL,
10 TCRR, and AER, are picked up after the company has
11 gone to a hundred percent competitive bid, will the
12 company be made whole financially for those
13 deferrals?

14 MR. FARUKI: Could I hear that back,
15 please?

16 EXAMINER PRICE: You may.

17 (Record read.)

18 A. I believe the company would be made
19 whole, but I would be more concerned about the
20 customers that are on SSO during that time period.
21 If the level of SSO load decreases, is cut in half
22 every year for the next four years, those customers
23 are going to see higher and higher and higher TCRR
24 balances being assessed to them. And so their TCR
25 rates could double, triple, quadruple over that time

1 period.

2 Q. In your opinion is the company in a death
3 spiral now?

4 A. For TCRR, yes.

5 Q. How about for all the other, for RPM or
6 FUEL?

7 A. I'd have to go back and look at those.

8 Q. Has the company provided any empirical
9 data to show that it is in a death spiral now for
10 TCRR?

11 A. That's what I believe is in my testimony
12 at page 8.

13 Q. What is the -- in page 8 I'm looking at
14 the numbers. Is there anything that we have in this
15 testimony on page 8 that shows what the impact per
16 kilowatt-hour would be to individual customers
17 because of the TCRR deferral?

18 A. I'm not sure which customers you're
19 talking about in that question.

20 Q. Fair enough. Let's use an example and
21 we'll work up. Let's say that I am a tier 1 under
22 750 kilowatt-hours a month residential customer. At
23 the moment what is the cost impact of the TCRR?

24 A. I would have to look at the TCRR
25 schedules to tell you what that impact would be.

1 Q. Do you have that with you?

2 A. I don't.

3 Q. Order of magnitude, are we talking about
4 tenths of mils per kilowatt-hour?

5 A. I don't know off the top of my head.

6 Q. In the death spiral isn't the fear that
7 customers will look at the -- I'm sorry. Under the
8 death spiral is the fear that the company has that
9 customers will look at their standard service offer
10 bill and say "I can do better elsewhere" and with
11 that they leave in great numbers to become shopping
12 customers?

13 A. The concern with the death spiral is that
14 you have costs that you're trying to recover over
15 customers who are leaving and, therefore, you're
16 incurring deferral balances that you're recovering
17 over fewer customers. And so the concern is, is not
18 only the company recovering money it incurred in
19 order to serve those customers, but also what the
20 impact is on those customers as that rate would grow
21 and grow and grow over time.

22 Q. And you've already indicated to me that
23 Mr. Donlon's suggestion would probably make the
24 company whole financially.

25 A. Yes, but, again, the concern is that what

1 it would do to SSO customers during the interim
2 period when there are fewer and fewer customers to
3 spread the same costs over, the rate would
4 significantly grow.

5 Q. Right. And your concern is what the cost
6 is going to be to that customer, so I'm asking you,
7 do you have any testimony today to tell me what the
8 impact of the TCRR customer, residential, 750, we'll
9 call it tier 1 customer would be under the TCRR now
10 and what it would be under Mr. Donlon's proposal?

11 A. We would have to agree on what the
12 shopping levels are for the SSO customers in order to
13 calculate what that is.

14 Q. Right. But the company has not offered
15 any price impact studies nor do you offer any
16 illustrative studies or customer impacts in your
17 testimony.

18 A. What I offer is the -- are the facts that
19 are on page 8 that says SSO load in 2011 was 7.5
20 gigawatt-hours, in 2012 it was 5.9, if we continue at
21 that trend, the TCRR rate would double, quadruple
22 over time.

23 EXAMINER PRICE: It could be I'm just not
24 understanding Mr. Donlon's proposal correctly, but if
25 instead of recovering through a nonbypassable rider

1 the amounts over 10 percent, over the 10 percent
2 threshold the company simply deferred them for future
3 recovery after the company was at 100 percent auction
4 on the CBT, the essence of customers' rates wouldn't
5 be any higher than they would be under your proposal,
6 would they?

7 THE WITNESS: If that's what his proposal
8 was. I didn't understand that to be his proposal.

9 EXAMINER PRICE: I'm not sure if I
10 understood his proposal correctly either, but under
11 the hypothetical amended, the Donlon proposal that I
12 just made, would that still be an issue?

13 THE WITNESS: That would have the same
14 financial impact to the company as what our -- no, I
15 take that back.

16 If it's deferred with --

17 EXAMINER PRICE: Carrying costs.

18 THE WITNESS: -- carrying cost, yes.

19 EXAMINER PRICE: If it was deferred with
20 carrying costs, the company would be made whole; is
21 that correct?

22 THE WITNESS: Yes.

23 EXAMINER PRICE: And it would have no
24 different rate impact on SSO customers than what you
25 are proposing.

1 THE WITNESS: That's correct.

2 EXAMINER PRICE: Thank you.

3 Q. (By Mr. Petricoff) So the concern is that
4 the, the increase that the TCRR might have on the SSO
5 customer. Is there a like concern that the customer
6 is remaining an SSO customer where it could get a
7 more -- a lower overall price if they shopped?

8 A. I'm sure that's the Commission's concern,
9 yes.

10 Q. Does the company have a concern about
11 what the impact of the other riders such as the SSR
12 would be on that SSO shopping customer?

13 A. Yes. The company considered the impact
14 of the SSR when we designed the SSR rate and looked
15 at total bill impacts and over the ESP term the
16 customers receive a lower price than today.

17 Q. All right. In terms of order of
18 magnitude, the TCRR concern is over an item that's
19 8.4 million and the SSR is an item that's, by the
20 company's calculation, 137 million.

21 A. That's correct.

22 Q. Okay. I think at this point I want to
23 move on to another topic with you and talk to you
24 about the competitive retail enhancements. It's
25 actually under the competitive retail enhancements

1 section, and that will be on page 13 of your
2 testimony.

3 If you would, I'd like to take a look at
4 line 17. I'll give you a minute to take a look at
5 your question and answer.

6 A. Okay.

7 Q. First of all, can you give me an example
8 of a customer who would be between a hundred kW and
9 200 kW?

10 A. Could be any small to medium industrial
11 or commercial customer.

12 Q. And as a small to medium industrial or
13 commercial customer, their power use may be tied to
14 their level of economic activity as opposed to the
15 weather?

16 A. Depends on what kind of a customer it is.

17 Q. Right now if you are a 150 kW customer
18 and you are buying standard service -- and you were
19 getting standard service generation, do you have to
20 have an interval meter?

21 A. No, you do not, because your load is
22 included in all of the SSO load that DP&L is
23 supplying. So DP&L is supplying as a whole all of
24 the SSO load and your load is included in that.

25 Q. So the company can supply your load

1 without knowing on an hourly basis what your load is
2 even though the company is obligated to supply the
3 amount of power you need every hour if you're
4 a 150 kW customer.

5 A. Yes. Because we have an obligation to
6 serve all customers that are located in our service
7 territory under our SSO tariffs.

8 Q. Would the company be supplying energy for
9 a shopping customer who's 150 kW?

10 A. I don't understand the question.

11 Q. If a customer -- if a 150 kW customer is
12 shopping, isn't it true that the competitive electric
13 retail supplier is the one who is responsible for
14 scheduling in on an hourly basis whatever the
15 generation needs are for that customer?

16 A. Yes.

17 Q. If a customer, a 150 kW customer, elects
18 to leave standard service and shop, would they have
19 to put in an interval meter to gauge the amount of
20 power they're using for every hour?

21 A. Yes, because we don't have -- we don't
22 have load profiles developed for that category of
23 customers.

24 Q. When you were supplying the customers,
25 when DP&L was supplying the customer itself, it

1 didn't know what the hourly use was, why is it
2 important now to know what the hourly use was for a
3 customer it no longer has to supply the generation
4 for?

5 A. Because we need to know what the
6 obligation is of that CRES provider. If that's the
7 only customer that CRES provider has, then that's
8 what the cost is that they incur from PJM and all of
9 the load obligation fees. If DP&L is supplying that
10 customer on SSO service, they're included as part of
11 a larger group and that one individual customer's
12 hourly usage is not as important.

13 Q. But doesn't PJM -- first of all, you
14 would agree with me that a competitive electric
15 retail supplier must be a load-serving entity at PJM?

16 A. Yes.

17 Q. And that load-serving entity CRES
18 supplier must send in an hourly schedule to PJM?

19 A. Yes.

20 Q. All right. And then PJM is going to true
21 that up.

22 A. Yes. And so, therefore, I would think
23 that the CRES provider would want to know what that
24 customer was using on an hourly basis because that
25 would impact the amount of cost that CRES provider is

1 incurring from PJM.

2 Q. But what if the CRES supplier said "Gee,
3 I can make a model for this customer that's as good
4 as the utility model so I don't need an interval
5 meter to supply it on an hourly basis." Do they have
6 the option of saying "Thank you for your concern, but
7 I would prefer not to buy the interval meter"?

8 A. No. Because if you don't estimate their
9 load appropriately, the company could incur that
10 because the company is left with whatever isn't being
11 served by the CRES provider.

12 Q. But won't the company -- won't the CRES
13 provider have to true up, then, with -- well, first
14 of all, let's go back and let's go through this in
15 steps.

16 I'm a CRES provider and I have my
17 customer and I've sent in my load profile, and then
18 PJM will basically, then, look to see what the
19 consumption is and look to see what the power I sent
20 in is and balance that out on an hourly basis.

21 A. Yes. But they would need to know what
22 the hourly usage was.

23 Q. Right. And DP&L supplies PJM with that
24 information.

25 A. Yes, and it's based on either load

1 profiles if we don't have an interval meter, or an
2 interval meter.

3 Q. Right. So right now for all standard
4 service customers you use the load profile, well,
5 actually, my theoretical customer I use in my
6 example, when they were an SSO customer you used the
7 load profile and that's the way you did the
8 balancing.

9 A. No. Because we are -- we are required to
10 supply everything that isn't supplied by a CRES
11 provider. So we don't need to take an hourly load
12 profile for every customer that's remaining. We just
13 know that we're serving anything that isn't served by
14 a CRES provider.

15 Q. And you think it's inadequate for the
16 CRES supplier to have their load calculated in the
17 same fashion as the company calculates its load for
18 purposes of balancing at PJM.

19 A. We meter at various points in our
20 distribution system and we have to supply information
21 to PJM that says here's what our total load is for
22 our distribution system and it's made up of all of
23 these load-serving entities so we're measuring that
24 as a whole and we're backing out the CRES provider
25 stuff and whatever is left, the utility has to

1 supply. And so if we don't estimate what the CRES
2 provider's load is accurately then the company is
3 left picking up the tab for this customer that's
4 served by the CRES provider.

5 Q. But it will always -- well, let me put it
6 this way: If the CRES supplier uses the same --
7 well, if DP&L reports to PJM the same methodology for
8 the CRES provider for a 150 kW customer that it does
9 for itself, then there is no difference from a
10 planning standpoint from the company as to what the
11 power was used by that -- the whole group of
12 customers.

13 A. You would have to meter off that customer
14 so that you would know exactly what that customer
15 used just as the company meters off its entire
16 distribution system and knows exactly what that
17 distribution system used and peels off the CRES
18 providers' pieces, whatever is left, the company has
19 to supply.

20 If I use that same example for you, we
21 need to meter off that customer to make sure we know
22 what that customer is using.

23 Q. Right. But then you are going to bill
24 the customers on that -- on that basis. If they were
25 all SSO customers, you would use that technique, or

1 if only part of them are SSO customers, you would use
2 the same profile technique for balancing.

3 A. I don't follow that question.

4 Q. Let's look at it another way. First of
5 all, no CRES supplier -- well, let's see. The
6 company is not making it optional for CRES suppliers
7 to put in interval meters, they have to put an
8 interval meter in if they're going to serve the
9 customer.

10 A. For a hundred kW and above the company's
11 threshold is you have to install the interval meter
12 so we know the level of usage the customer uses on an
13 hourly basis.

14 Q. And your thinking is because once the
15 company no longer has the responsibility for
16 generation, it now needs to know exactly what the
17 customer's using on an hourly basis where it doesn't
18 need to know what the customer's using on an hourly
19 basis when it was supplying it as a standard service
20 customer.

21 A. Yes. Because we have an obligation to
22 serve whoever is left and whatever load is on our
23 system that isn't assigned to an LSE other than DP&L,
24 we have to supply at the LMP price. There's a cost
25 there.

1 Q. Have you done any studies, now that you
2 have the hourly basis, and compared that to what the
3 results would have been if you used the profile?

4 A. No. Because, as I say in my testimony,
5 in order to calculate a load profile, we have to go
6 back and do a load research study to gather that
7 data, pull samples, and create load profiles based on
8 a category that we don't currently have.

9 Q. When did you first implement the policy
10 of making customers over a hundred kW who were
11 shopping puts in an interval meter?

12 A. I believe it was in the beginning in 2001
13 I think, or '2.

14 Q. So shouldn't you have a decade of data?

15 A. Not for that group of customers because
16 we assumed those customers would have interval
17 meters, that's what our --

18 Q. But no, you would know for every shopping
19 customer what the profile would have given them and
20 what their interval meter showed they actually used.

21 A. It would have to be a statistically valid
22 sample.

23 Q. And you've not done that type of study,
24 though you have the data for every shopping customer
25 over a hundred kW.

1 A. We have not done that study.

2 Q. Okay.

3 EXAMINER PRICE: Do you -- Mr. Petricoff,
4 I have a question. I'm sorry.

5 MR. PETRICOFF: I'm sorry, go right
6 ahead.

7 EXAMINER PRICE: Do you know -- you may
8 not break out your switching statistics to this
9 level, but do you know the switching rate for
10 customers between 100 and 200 kW?

11 THE WITNESS: I don't know.

12 EXAMINER PRICE: Thank you.

13 Thank you, Mr. Petricoff.

14 Q. (By Mr. Petricoff) Now, I want to draw
15 your attention now to lines 11 to 14, we've been
16 working through your answer here, and we talk
17 about -- and in that line you say "...Mr. Bennett
18 states that requiring customers to install interval
19 meters is a 'discriminatory cost for shopping.'" And
20 then you go "all shopping customers larger than a
21 hundred kW are required to install interval
22 meters...."

23 Isn't it true, though, that all
24 nonshopping customers between a hundred kW and 200 kW
25 do not have to install interval meters?

1 A. It's true that nonshopping customers
2 don't have to install the meters and that's for all
3 the reasons I just explained.

4 Q. Okay. And because -- and, therefore,
5 it's only shopping customers who would have to pay
6 the \$570 charge for the meter and then the monthly
7 cost to, either by phone or WiFi, send the data in to
8 DP&L.

9 A. Yes, because, as I state in the next Q
10 and A, the payback period for those kinds of
11 customers would be a very short payback of two to
12 three months.

13 Q. Okay.

14 A. If anyone is making a capital investment,
15 you're looking for usually a payback of less than a
16 year, and two to three months is well within that
17 time -- that period of time.

18 Q. Well, if, in fact, in the future that
19 narrowed, would DP&L at that point absorb the
20 \$570 charge?

21 MR. FARUKI: I'll object to the form. I
22 don't know what "if that narrowed" --

23 MR. PETRICOFF: Yeah, I'll withdraw the
24 question.

25 EXAMINER PRICE: Thank you.

1 Q. So, basically, the thinking is that the
2 company's position that because the savings from
3 shopping are so great now, it's not too great a
4 burden to make the shopping customer pay for the
5 meter and the information transfer costs.

6 A. No, I would not characterize the
7 company's position that way. As I said before, it's
8 important to know what those customers are using on
9 an hourly basis so that we can calculate what our
10 obligations are to PJM and that we're charged the
11 correct amount and the CRES providers are charged the
12 correct amount.

13 Q. So the company would keep this charge in
14 even if there were minimal savings to shoppers.

15 A. Yes.

16 Q. Okay.

17 EXAMINER PRICE: Do any nonshopping
18 customers above 100 kW have interval meters already?

19 THE WITNESS: There probably are some.
20 They can ask for them and we'll install them.

21 EXAMINER PRICE: Do you know how many
22 customers we are talking about that currently don't
23 have interval meters?

24 THE WITNESS: I recall a number that was
25 in the 1 to 200 customer range.

1 EXAMINER PRICE: One to 200 customers?

2 THE WITNESS: Uh-huh.

3 EXAMINER PRICE: Thank you.

4 Q. (By Mr. Petricoff) After the shopping
5 customer pays to install a meter and arranges to have
6 the data transferred, can they get the interval data
7 from DP&L free of charge?

8 A. I believe we currently charge CRES
9 providers to receive the hourly interval meter -- I'm
10 sorry, meter information.

11 Q. Okay.

12 MR. PETRICOFF: May I have a minute, your
13 Honor?

14 Q. One last question for you,
15 Ms. Seger-Lawson. On page 15 there is a number of
16 questions concerning supplier consolidated billing.
17 Isn't it true that the proposal from Mr. Bennett was
18 that basically there would be a stakeholders meeting
19 to discuss, I'm sorry, CRES supplier consolidated
20 billing? That was his only suggestion?

21 A. I would have to go back to the -- to his
22 testimony and read it. I don't have that in front of
23 me.

24 Q. Does the company -- would the company
25 object attending and participating in a stakeholders

1 meeting to discuss consolidated billing?

2 A. You mean supplier consolidated billing?

3 Q. I'm sorry, supplier consolidated billing.

4 A. As I say in my testimony, before we can
5 offer a supplier consolidated billing we would have
6 to work through all the rules and regulations, the
7 notice, the payment posting priorities, any payment
8 agreements, all the issues would have to be fully
9 vetted and the company wouldn't be interested in
10 providing supplier consolidated billing if those
11 rules weren't already established because we don't
12 want to do it twice, we don't want to program
13 something one way and then have rules come out that
14 apply to all the utilities and cause us to program
15 everything again.

16 Q. And so the question to you, if, in fact,
17 those were the topics that would be discussed at the
18 stakeholders meeting, would the company come and
19 discuss it?

20 A. It would have to be at an Ohio -- it
21 would have to be statewide. We would want those to
22 be discussions about what the rules are so that we
23 knew we would be implementing per the Ohio rules.

24 Q. Doesn't Dayton have a tariff provision
25 now that indicates that it would consider supplier

1 consolidated billing?

2 A. I don't know.

3 Q. I take it, then, that you would not
4 attend a meeting if it was not statewide to discuss
5 supplier consolidated billing?

6 MR. FARUKI: Object. Asked and answered.
7 She just said "no."

8 EXAMINER PRICE: There's your answer.
9 Sustained.

10 MR. PETRICOFF: I have no further
11 questions. Thank you very much.

12 EXAMINER PRICE: Let's go off the record.

13 (Discussion off the record.)

14 (Lunch recess taken.)

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EXAMINER PRICE: Go back on the record.
Ms. Yost.

MS. YOST: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Ms. Yost:

Q. Good afternoon, Ms. Seger-Lawson.

A. Good afternoon.

Q. Could you please turn to page 2 of your
testimony. Are you there?

A. Yes.

Q. Starting with line 6 on page 2 you state
"With Staff's encouragement, DP&L thus entered into a
Stipulation that extended its RSP to December 31st,
2010." Then you have a citation to the stipulation
there.

And then you go on to state "It was
undisputed that that Stipulation provided 262 million
in savings compared to projected market rates over
the period 2006 to 2010," and then it looks like you
have a citation of November 14th, 2005, testimony,
your testimony, as Attachment B.

1 A. Yes.

2 Q. Is that the testimony that you provided
3 in support of the stipulation?

4 A. Yes.

5 Q. So this \$262 million in savings, that was
6 just projected savings, correct?

7 A. That was projected savings over market
8 rates that would have been effective the same period
9 of time.

10 Q. And you have not done any analysis to
11 determine whether or not there was actual savings
12 from 2006 to 2010, correct?

13 A. No. But I think the level of shopping
14 would show that DP&L's rates were below market. The
15 level of shopping during that period was very low.

16 Q. And if you could turn to page 7
17 [verbatim] of your testimony, please, starting with
18 the -- with line 7 towards the end, after the comma
19 it states "the Commission should consider DP&L's long
20 history of providing below-market rates to
21 customers."

22 For the purposes of your rebuttal
23 testimony you did not do any analysis in regards to
24 the historic rates of DP&L versus market rates,
25 correct?

1 A. Correct.

2 Q. And you did not draft the conclusion that
3 the Commission should consider DP&L's long history of
4 providing below market rates to customers, did you?

5 A. I don't recall who drafted that.

6 Q. Do you recall that the company filed its
7 ESP case, which is known in the docket as
8 No. 08-1094, approximately in the fall of 2008?

9 A. The '08 case I believe was filed, I think
10 in October of 2008.

11 Q. Thank you.

12 And do you recall that the rates became
13 effective in approximately February 2009?

14 A. No. The stipulation was signed in
15 February of 2009 and the rates were effective I
16 believe June 1st of '09.

17 Q. Thank you.

18 Would you agree that at approximately
19 that time the majority of the customers of DP&L that
20 had switched switched to DP&L's affiliate?

21 A. I remember that in the fall of 2008 the
22 customers that had switched had switched to our
23 affiliate and were actually returning to standard
24 service offer at the time we were negotiating the '08
25 case and so customers were coming back to standard

1 service offer. But there was relatively little
2 shopping with anyone other than our affiliate.

3 Q. And when you mean your affiliate, you
4 mean what is known as DPLER; is that correct?

5 A. DPLER, yes.

6 Q. And would you agree that toward the end
7 of 2009 there was a drop in market prices and
8 customers began to switch at the end of 2009?

9 A. I recall that beginning at the end of
10 2009 there was an increase in customer switching.

11 Q. Dona, back on your testimony on line 3
12 [verbatim] the statement that we just read about on
13 line 7 and 8, in that statement you state that "the
14 Commission should consider DP&L's long history of
15 providing below-market rates to customers." What
16 customers are you referring to?

17 A. I'm referring to standard service offer
18 customers.

19 Q. Which classes?

20 A. All standard service offer customers.

21 Q. Would you agree that the level of
22 switching that the company has incurred recently
23 demonstrates that the market -- the company's --
24 excuse me, strike that. Let me start that over
25 again.

1 Would you agree that the level of
2 switching that the company incurred recently
3 demonstrates that the market rates are below the
4 company's rates currently?

5 A. Yes.

6 Q. For the purposes of your rebuttal
7 testimony you did not do any analysis in regards to
8 the historic rates of DP&L versus market rates,
9 correct?

10 A. That's correct.

11 Q. And are you aware that as of January 2013
12 DP&L's monthly total bill which includes both
13 generation rates, distribution, and transmission
14 rates for residential and industrial customers was
15 the second highest among Ohio's major electric
16 utilities?

17 A. Yes, I'm aware of that.

18 Q. Are you also aware that as of
19 January 2012 and January 2011 the total monthly bills
20 of DP&L's residential and industrial customers were
21 the highest or the second highest among Ohio's major
22 electric utilities?

23 A. I don't know. I'd have to go back and
24 look.

25 Q. Are you aware that the returns on equity

1 reported by DP&L over the last eight years from 2004
2 to 2011 are close to 20 percent?

3 A. I don't know.

4 Q. Are you aware that any ROE of the
5 company?

6 A. I'm aware of the ROE that the company has
7 proposed in this case.

8 EXAMINER PRICE: You don't recall the
9 historic last --

10 THE WITNESS: No.

11 EXAMINER PRICE: -- last several years?

12 A. I don't know. I know the parties have
13 made claims about what the ROEs are, but I don't know
14 what those are.

15 Q. Are you aware of the average ROE earned
16 by Ohio's seven major electric distribution utilities
17 over the same period of time from 2004 to 2001
18 [verbatim] was approximately 12.84 percent?

19 A. I'm not aware of what the other ROEs are
20 by other Ohio utilities.

21 Q. Could I have you turn to page 6 of your
22 testimony, please. Starting on line 5. Are you
23 there?

24 A. Page 6, you said, what line?

25 Q. Starting line 5.

1 A. Five.

2 Q. Starting on line 5 you state "If the
3 Commission finds that one of those costs, such as the
4 administrative costs associated with implementing the
5 Competitive Bid auction, should be recovered on a
6 bypassable basis, that does not mean that the entire
7 RR should be made bypassable."

8 A. Yes, I see that.

9 Q. Is it acceptable to DP&L to have the cost
10 of the CBP included in the bypassable generation
11 rates resulting from the CBP?

12 A. No. Like that statement says, if the
13 Commission -- the company's proposal is that the
14 auction costs would be included in the reconciliation
15 rider. What that sentence says is, however, if the
16 Commission doesn't agree with us, they shouldn't make
17 the entire RR bypassable.

18 Q. Would you please turn to page 20 of your
19 testimony.

20 A. Okay.

21 Q. Starting with the question on line 10 you
22 discuss Duke's proposal on storm costs in its pending
23 distribution rate case, correct?

24 A. Yes.

25 Q. And you understand that that is a pending

1 case, that the Commission has not made a final
2 determination on that case?

3 A. Yes, I do understand that.

4 Q. And in your discussion on page 20 you go
5 on to state that Duke proposes deferral of any, not
6 just major, storm costs, correct?

7 A. Yes.

8 Q. And your conclusion regarding what Duke
9 is seeking, specifically the proposal of a deferral
10 of all, not just major, storm costs, was based on
11 your reading of Duke's prefiled testimony in that
12 case; is that correct?

13 A. Yes.

14 Q. And you did not read the testimony of any
15 intervenors or the staff in that case, did you?

16 A. No, I did not.

17 MS. YOST: Your Honor, at this time I
18 would like to have marked as OCC Exhibit 25 the
19 direct testimony of Beth E. Hixon in Case
20 No. 12-1682, et al.

21 EXAMINER PRICE: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. FARUKI: I'm sorry, what was that
24 number again?

25 EXAMINER PRICE: Twenty-five, wasn't it?

1 Ms. Yost, 25?

2 MS. YOST: Twenty-five, yes, your Honor.

3 Thank you.

4 MR. FARUKI: Thank you, your Honor.

5 Q. Dona, please take a moment to look at OCC
6 Exhibit 25. Are you ready to proceed?

7 A. Sure.

8 Q. And on page 20, lines 11 and 12 you
9 indicate that Duke's proposal was discussed by
10 William Don Wathen in Case No. 12-1682, correct?

11 A. Yes.

12 Q. And OCC 25 indicates that it was filed in
13 Case 12-6282, correct -- I'm sorry, I misspoke, in
14 12-1682, correct?

15 A. Yes.

16 Q. If I could have you turn to what is
17 marked as an Attachment BEH-3.

18 And you did not read the testimony of
19 Beth Hixon before you drafted your testimony in this
20 case, correct?

21 A. Correct.

22 Q. When I mean "testimony of Beth Hixon," I
23 mean as filed in Case No. 12-1682. Correct?

24 A. Correct.

25 Q. And have you located what is identified

1 as Attachment BEH-3?

2 A. Yes.

3 Q. And that document has two pages. If you
4 see in the upper right-hand page 1 of 2. If you
5 could turn to page 2 of 2, it indicates on page 2 the
6 person responsible, and who is that?

7 A. William Don Wathen, Jr.

8 Q. And if you could turn to page 1 of 2, and
9 this request states that "Regarding the proposed
10 Storm Cost Recovery Mechanism please answer the
11 following questions:"

12 And if you go down to No. 2, it states
13 "If this recovery is for 'major' storms only, define
14 'major.'" And then you see the response below.

15 Could you please read the response No. 2
16 below on page 1.

17 A. It says "The recovery is for 'major'
18 storms only. The Company uses The Institute of
19 Electrical and Electronics Engineers, Inc. Guide for
20 Electric Power Distribution Reliability Indices to
21 determine if a storm qualifies as a Major Event Day,
22 (MED)."

23 Q. And you were not aware that the -- that
24 Mr. Wathen had made this clarification before you
25 filed your testimony in this case, correct?

1 A. No, I was not. I base that, including
2 his testimony, based on what I was reading of his
3 testimony which appeared to include all, all storms.

4 Q. Thank you.

5 In 2012 the company filed an application
6 to defer storm costs in regards to the storms that
7 occurred at the end of June 2012, correct?

8 THE WITNESS: I'm sorry, could you reread
9 the question?

10 (Record read.)

11 A. In 2012 we filed two storm costs; one was
12 to defer the cost associated with the derecho, and
13 the other is to recover historical cost and set a
14 storm cost recovery rider going forward.

15 Q. And you're aware that the Commission
16 ruled, one, the company's application in regard to
17 the deferral of the costs that were incurred as a
18 result of the storms at the -- in 2012 I believe at
19 the end of June?

20 A. Yes.

21 Q. And you're aware that in its ruling the
22 Commission authorized the company to defer those
23 costs but specified that that deferred amount would
24 be reduced by the three-year average major storm
25 cost, correct?

1 A. Yes.

2 Q. And when the Commission ruled that the
3 three-year average storm cost would be used, what
4 years were applicable for those costs that the
5 company incurred in 2012?

6 A. I don't recall. I don't have that in
7 front of me.

8 Q. Well, if the costs were incurred in 2012,
9 wouldn't that three-year average be based on 2009,
10 2010, and 2011?

11 A. Again, I don't have that in front of me,
12 but presumably, yes.

13 Q. And in that application the company did
14 not argue that 2011 should be excluded from any
15 average regarding major storm events, correct?

16 A. The company did not propose that that
17 deferral should be reduced by any amount. The
18 company was seeking deferral of a major storm and
19 that was the derecho and wanted to defer the entire
20 amount so that's the case the company put forth in
21 that case.

22 Q. If you could turn to page 23 of your
23 testimony, please. Are you there?

24 A. Yes.

25 Q. Starting with the question on line 12, it

1 states "Is the SSR a charge that would have the
2 effect of stabilizing or providing certainty
3 regarding retail electric service?"

4 Your answer is: "Yes, it is. It would
5 stabilize retail electric service provided by DP&L
6 because it would help to assure DP&L's financial
7 integrity, which is important to the company's
8 ability to provide stable, safe, and reliable
9 electric service."

10 You would agree with me that the company
11 has not performed any analysis, study, or evaluation,
12 either internally or through outside consultants,
13 regarding the effects of the proposed SSR on the
14 stability of rates in total bills paid by its
15 customers, correct?

16 A. No, I would disagree with that. We
17 included in our filing the impact on typical bills of
18 what the entire company's case would result based on
19 projected results from competitive bid.

20 Q. Does the typical bill analysis include an
21 analysis regarding the stability of rates?

22 A. No, but I thought your question was what
23 the bill impact on customers would be.

24 Q. So we can agree that at least the typical
25 bill analysis that you just mentioned does not

1 include any analysis of the stability of rates,
2 correct?

3 A. I think that analysis is covered by
4 Dr. Chambers and Witness Jackson in their discussion
5 about what would happen if the SSR was not approved.

6 MS. YOST: Your Honor, at this time if I
7 could have OCC Exhibit 26 marked, excuse me, request
8 to produce No. 94.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. YOST: Your Honor, may I approach?

12 EXAMINER PRICE: You may.

13 Q. Please take a moment to familiarize
14 yourself with OCC 26 and let me know when you're
15 ready to proceed.

16 A. Okay.

17 Q. Could you please read the request and
18 response on OCC No. 26?

19 A. The request is RPD-94 "Referring to OCC
20 Interrogatory No. 430, please provide a copy of any
21 analysis, study, or evaluation, either internally or
22 through outside consultants, regarding the effects of
23 the proposed SSR on the 'stability' of rates and
24 total bills paid by its customers."

25 And the response is "General Objections

1 No. 2, (unduly burdensome), 3, (privileged and work
2 product), 4, (proprietary). Subject to all general
3 objections, DP&L states that it does not possess
4 responsive documents."

5 Q. Thank you.

6 MS. YOST: Your Honor, if I can have just
7 a minute, I may be concluded with my
8 cross-examination.

9 EXAMINER PRICE: You may.

10 MS. YOST: No further questions, your
11 Honor. Thank you.

12 THE WITNESS: Thank you.

13 EXAMINER PRICE: Ms. Bojko.

14 MS. BOJKO: Yes, your Honor, thank you.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Bojko:

18 Q. Good afternoon, Ms. Seger-Lawson. As you
19 know, I am Kim Bojko and I represent SolarVision in
20 this matter.

21 I'd like to talk to you a little more
22 this afternoon with your rebuttal testimony about the
23 AER-N rider which begins on page 11 of your
24 testimony.

25 A. Okay.

1 Q. And on page 12 -- I'm sorry, then on page
2 12, if you'll turn to the next page of your
3 testimony, lines 9 and 11, you explain there that the
4 Commission determined need for the 1.1 megawatt solar
5 generating facility specifically known as Yankee 1.
6 Do you see that?

7 A. Yes.

8 Q. And I don't mean to be duplicative of
9 questions that were asked earlier today, but if you
10 can bear with me, I need a few questions to lay a
11 foundation here, Ms. Seger-Lawson. So I apologize if
12 some of them are repetitive.

13 And then also if you'd turn to page 13,
14 lines 9 and 12, you explain here that while the
15 availability of Ohio's solar RECs may be greater now,
16 the Commission found that there was not a sufficient
17 number of solar RECs in the market and then the
18 Yankee was needed. Is that -- do you see that?

19 A. Yes.

20 Q. So from these two pieces of your
21 testimony it's your understanding that the need found
22 by the Commission was based on the need for the solar
23 RECs in the market; is that correct?

24 A. I don't know.

25 Q. Okay. But you do agree with me on

1 page 13, 9 through 12, that you state that "...while
2 the availability of Ohio solar RECs may be greater
3 now, the fact is that the Commission found that there
4 were insufficient SRECs at the time that Yankee was
5 built...."

6 Is that statement in your testimony?

7 A. Yes.

8 Q. So when you drafted your testimony, it
9 was your understanding that the Commission found that
10 there was an insufficient number of RECs and, thus,
11 the Yankee facility was needed in the long-term
12 forecast report case.

13 A. Yes. But I think your question was
14 that -- was the Commission ruling for the need
15 because there weren't sufficient RECs, and I
16 wasn't -- I'm not sure why the Commission was ruling
17 the way that they were.

18 Q. But you state as a basis of your
19 testimony that the Commission found that there
20 weren't enough RECs and, thus, the facility was
21 needed. Isn't that what you state in this testimony?

22 MR. FARUKI: I'll object, your Honor.
23 She keeps adding the "thus," but that causal
24 connection is not stated in Seger-Lawson's testimony,
25 so I object on mischaracterization.

1 EXAMINER PRICE: Sustained. It says
2 "and," it doesn't say "thus."

3 MS. BOJKO: Actually, your Honor, it says
4 "so." So instead of the word "thus," Mr. Faruki,
5 I'll use the word "so."

6 Q. It says "So, while the availability of
7 Ohio's Solar RECs may be greater now, the fact is the
8 Commission found that there were insufficient solar
9 RECs at the time Yankee was built and it found a need
10 for the facility...."

11 Is that accurate?

12 MR. FARUKI: I'll object, asked and
13 answered. Twice.

14 EXAMINER PRICE: She can go ahead and
15 answer the question.

16 A. That's what my testimony says, but I
17 think your original question to me I thought was what
18 was the Commission thinking when they approved the
19 need, and that's why I said I don't know.

20 Q. Aren't you making that conclusion here in
21 your testimony, Ms. Seger-Lawson?

22 A. The conclusion I'm making is when the
23 company built Yankee, there were insufficient solar
24 RECs and the Commission found a need for the facility
25 in the 2010 LTR.

1 EXAMINER PRICE: Mrs. Seger-Lawson,
2 you're not saying that in the LTFR the Commission
3 found there were insufficient solar RECs, you're
4 saying in the ACP case the Commission found there
5 were insufficient solar RECs.

6 THE WITNESS: That's correct.

7 Q. On page 12 of your testimony you quote
8 from the Commission order, so to clarify the question
9 from the Bench -- to clarify the answer of my
10 question to follow up from the Bench was that you
11 quote from the FOR case that there's a need for a 1.1
12 megawatt solar generation facility known as Yankee.
13 Is that correct?

14 A. Yes, that's correct.

15 Q. So in the Commission's order for the FOR
16 case, they found that there was a need for the solar
17 generation facility known as Yankee.

18 MR. FARUKI: Objection. Asked and
19 answered.

20 EXAMINER PRICE: Overruled.

21 A. Yes, that's correct.

22 Q. And it's your understanding of the need
23 for the solar RECs in the market today by Dayton
24 Power & Light, other utilities and marketers, that
25 solar RECs are needed in order for these entities to

1 meet their renewable portfolio standards; is that
2 correct?

3 MR. FARUKI: Can I hear that back, your
4 Honor?

5 EXAMINER PRICE: You may.

6 (Record read.)

7 MR. FARUKI: Thank you.

8 A. Yes, you either need solar RECs or you
9 need a generation source from solar per the law.

10 Q. Meaning that in order to meet your
11 renewable portfolio standards, you have to either
12 retire solar renewable energy credits and -- whether
13 they are produced from your own facility or produced
14 by purchasing solar RECs; is that correct?

15 A. Yes, that's correct.

16 Q. And currently, if I understood your
17 testimony from earlier in this proceeding, Dayton
18 Power & Light is creating solar RECs, is generating
19 solar RECs, from the Yankee 1 facility; is that
20 right?

21 A. That's correct.

22 Q. And they're using those solar RECs from
23 the facility to meet a portion of their RPS
24 requirements; is that correct?

25 A. Yes, that's correct.

1 Q. And Dayton Power & Light also has to
2 purchase solar RECs from the market in order to
3 satisfy the remainder of their renewable portfolio
4 standard requirements that it's obligated to meet; is
5 that right?

6 A. Yes, that's my understanding.

7 Q. And Dayton Power & Light passes those
8 solar renewable energy costs, the purchases that we
9 just discussed, on to customers through the AER
10 rider; is that right?

11 A. The cost of RECs that we purchase is
12 passed through to the AER rider, but the cost of the
13 RECs that are generated by Yankee are passed through
14 at zero cost.

15 Q. My question was the ones you purchase on
16 the open market. You pass those costs through the
17 AER rider; is that correct?

18 A. Yes.

19 Q. And the AER rider is bypassable; is that
20 correct?

21 A. Yes, except for the company would propose
22 that any amount over 10 percent, if the deferral
23 balance grows over 10 percent, then we would transfer
24 that to the reconciliation rider.

25 Q. So a portion of the solar renewable

1 energy credit costs could become nonbypassable at
2 some point.

3 A. If the deferral balance that's in the AER
4 grows beyond 10 percent of the base cost of that
5 rider.

6 Q. And, again, those are needed for
7 compliance with the renewable portfolio standards; is
8 that correct?

9 A. The RECs are required, yes.

10 Q. And the AER-N rider is not -- is not
11 bypassable; is that correct?

12 A. The AER-N rider the company is proposing
13 to be a nonbypassable charge because it complies with
14 4928.143(B) (2) (b) .

15 MS. BOJKO: Your Honor, I move to strike.
16 I asked if it was bypassable or nonbypassable. Yes
17 or no, is it a nonbypassable rider.

18 MR. FARUKI: Your Honor, she answered
19 that question and explained why. It's appropriate.

20 EXAMINER PRICE: We'll deny, for now.

21 If you would just give a "yes" or "no"
22 answer to the question, I'd appreciate it.

23 THE WITNESS: Okay.

24 EXAMINER PRICE: Repeat your question.

25 Q. The AER-N rider is nonbypassable,

1 correct?

2 A. Yes.

3 Q. And the AER-N rider will include the cost
4 of capital for constructing the facility and ongoing
5 O&M associated with that facility; is that correct?

6 A. Yes; I believe it meets the letter of the
7 law.

8 MS. BOJKO: Your Honor, I move to strike
9 after the word "yes."

10 EXAMINER PRICE: Granted.

11 Q. And assuming that the -- we already know
12 that the facility is built; is that correct?

13 A. Yes.

14 Q. Okay. Assuming that the facility
15 continues to operate, Dayton Power & Light intends to
16 continue to retire solar renewable energy credits
17 from that facility in order to meet Dayton Power &
18 Light's renewable portfolio standards; is that
19 correct?

20 A. Yes.

21 Q. And just as it's done today, if the
22 Commission approves the AER-N rider, and those
23 capital costs and O&M costs associated with the
24 facility go in that rider, Dayton Power & Light will
25 continue to retire the solar renewable energy credits

1 that are produced from the facility in order to meet
2 the renewable portfolio standard compliance in the
3 law; is that correct?

4 EXAMINER PRICE: Could I have the
5 question back again?

6 (Record read.)

7 A. Yes.

8 Q. And if the Yankee 1 facility produces
9 solar renewable energy credits that exceed Dayton
10 Power & Light's solar renewable energy requirements
11 under the renewable portfolio standard in the law,
12 Dayton Power & Light would be free at that time to
13 sell the solar renewable energy credits into the open
14 market; is that correct?

15 A. I think that there's nothing restricting
16 us from doing that, but as I understand it, solar
17 RECs that are generated don't expire, so we might
18 want to hold on to those and not sell them.

19 Q. But it's possible that you could sell
20 them if the need wasn't there for -- to meet Dayton
21 Power & Light's compliance.

22 A. Yes.

23 Q. And in a response to previous questions
24 that you had with a discussion you had with
25 Mr. Alexander, you weren't implying that a CRES

1 provider could come before the Commission and
2 actually request a comparable AER-N rider, were you?

3 A. I would have to look at the law to find
4 out if anyone other than an EDU is authorized to do
5 that.

6 Q. You would have to research the law to
7 determine if a CRES provider could come before the
8 Commission to get a nonbypassable rider on all
9 customers whether they supply electricity to those
10 customers or not?

11 A. Well, I believe that 4928.143(B)(2)(c)
12 says that as part of an electric security plan the
13 plan may provide or include, and it lists a number of
14 things, one of them being the establishment of a
15 nonbypassable surcharge for the life of a generating
16 facility that is owned or operated by an electric
17 distribution utility. That's what the Ohio Revised
18 Code says.

19 Q. And --

20 EXAMINER PRICE: So the answer to your
21 question is no, no CRES provider can get those.

22 Q. And under an ESP --

23 EXAMINER PRICE: I've got a question
24 pending.

25 MS. BOJKO: I'm sorry.

1 EXAMINER PRICE: So the answer to her
2 question is no, no CRES provider can get a
3 nonbypassable --

4 THE WITNESS: Not per the current Ohio
5 Revised Code.

6 EXAMINER PRICE: Thank you.

7 MS. BOJKO: Oh, I didn't understand that
8 to be her response. I'm sorry. Can you repeat --

9 EXAMINER PRICE: You can repeat my
10 question and answer.

11 MS. BOJKO: Well, her prior answer as
12 well.

13 (Record read.)

14 MS. BOJKO: I apologize, I didn't mean to
15 interrupt the Examiner.

16 Q. (By Ms. Bojko) Just so I'm clear of the
17 response, the answer is no, a CRES provider could not
18 come in and get a nonbypassable rider for building a
19 generating facility.

20 A. Not under 4928.143.

21 Q. Okay.

22 A. Which is what the company has filed
23 under.

24 Q. I'm really not trying to be difficult. I
25 can't hear you back here, I'm sorry. I did not hear

1 the end of your response.

2 A. I said not under 4928.143, which is the
3 provision that the company has sought the recovery of
4 that rider through.

5 Q. Okay. Thank you.

6 And I think Mr. Petricoff talked to you
7 about the AER rider so I don't, these questions were
8 not asked. I'm referring to the AER-N -- N -- rider,
9 and so it's my understanding that you -- that The
10 Dayton Power & Light under the provision of the law
11 that you just stated is proposing to pass these costs
12 on to all customers and, as you just mentioned, that
13 a CRES provider could not pass on AER-N costs to all
14 customers but a CRES provider does have to meet the
15 renewable portfolio standards; is that correct?

16 A. I'm not a CRES provider so I haven't
17 looked at it from that perspective, but this section
18 that the company has proposed is under the 4928.143.
19 I don't know if there's another provision that a CRES
20 provider could seek a nonbypassable charge for a new
21 generation facility. I don't know.

22 Q. Well, are CRES providers' rates regulated
23 by the Commission?

24 MR. FARUKI: I'll object. These
25 questions are all asking for legal conclusions and

1 now she's wandered away from the company's
2 application to ask about the legal requirements for
3 other parties.

4 EXAMINER PRICE: She can answer if she
5 knows. It's not a legal conclusion, it is her lay
6 opinion. So she can answer if she knows.

7 Q. Your 15 years, I believe you stated, of
8 regulatory experience in front of the Commission, in
9 your opinion as a CRES provider or, to your
10 knowledge, has a CRES provider ever come in to
11 request the establishment of a rate to charge its
12 customers or a rate -- we'll start with that one -- a
13 rate to charge any of its customers?

14 A. CRES providers are permitted to charge
15 whatever prices they want to.

16 Q. That wasn't my question. Has a CRES
17 provider ever filed an application before the
18 Commission and gotten approval of charging a specific
19 rate to the customer?

20 A. Not that I'm aware of, but that doesn't
21 mean that they can't. There may be, they may find
22 some way to apply to the Commission and ask for
23 recovery of their own generation facility.

24 Q. Okay. Ms. Seger-Lawson, in your 15 years
25 of experience has a CRES provider ever come into the

1 Commission to apply for a rate that's charged to all
2 customers, Dayton Power & Light's customers,
3 FirstEnergy's customers, AEP's customers, all
4 customers including their own customers?

5 A. No, but you asked me could they. And I
6 guess I'm saying I don't know. There may be
7 something that they could look at that they could try
8 and do that.

9 MS. BOJKO: Your Honor, I'll move to
10 strike the answer. I asked "in your experience has
11 this ever occurred to your knowledge."

12 MR. FARUKI: Your Honor, it was
13 appropriate for her to explain what she does and does
14 not know on these kinds of questions that begin "Has
15 a CRES provider ever."

16 EXAMINER PRICE: That was an awfully
17 broad question. Your motion to strike is denied.

18 Q. I still don't think my question was
19 answered, Ms. Seger-Lawson.

20 To your knowledge, are you aware of any
21 proceeding where a CRES provider has come before the
22 Commission to seek a nonbypassable rider to be
23 charged to all customers in a particular service
24 territory or to all Ohio customers?

25 MR. FARUKI: Objection. Asked and

1 answered. She said "no."

2 EXAMINER PRICE: She hasn't said no yet
3 and I think counsel is trying to elicit a "yes" or
4 "no" question. I gave her the broad answer the first
5 time, but now she should answer "yes" or "no" or
6 explain why she cannot.

7 A. No, they have historically not done that.

8 Q. And assuming that the Commission approves
9 DP&L's proposal for an AER-N, nonbypassable, rider to
10 all customers in Dayton Power & Light's service
11 territory and a customer shops, would they also have
12 to pay for -- a compliance cost through the CRES
13 provider?

14 I'll withdraw. We need to take a step
15 back. I apologize. Something Mr. Petricoff said, I
16 was hoping we could skip that step but by the look on
17 your face, we're not going to skip that step.

18 Are CRES providers required to meet
19 renewable portfolio standards?

20 A. Yes.

21 Q. So even if the Commission approves a
22 nonbypassable charge to all customers in Dayton
23 Power & Light's service territory in order to have
24 Dayton Power & Light recover its costs for building
25 the solar facility that you use to meet your

1 renewable portfolio standard requirements, CRES
2 customers will also have to pay those renewable
3 portfolio charges to the CRES provider.

4 A. Yes.

5 Q. And, to your knowledge, could DP&L
6 currently sell its solar renewable energy credits in
7 the REC market today?

8 A. Yes.

9 Q. To your knowledge, in your regulatory
10 history, have you -- are you aware of a solar
11 developer coming in and asking for recovery of its
12 cost to build a solar facility?

13 A. No.

14 Q. And does a solar developer also sell its
15 solar renewable energy credits in the same market
16 that you just stated Dayton Power & Light could sell
17 its RECs into?

18 A. Yes, but you asked me if they could, if
19 DP&L could sell those RECs, and the answer is yes.
20 But I don't think that we would because we can hold
21 on to those RECs and they don't expire. So I don't
22 anticipate that the company would be selling those
23 RECs into the market.

24 Q. Do you know whether any electric utility
25 company in the state of Ohio, an EDU just like

1 yourself, has ever sold RECs into the REC market in
2 Ohio?

3 A. I don't know.

4 Q. In going back to my developers
5 hypothetical, if they are selling in the same market
6 that you have stated Dayton Power & Light could, now
7 whether you choose to or not, you could, they would
8 be selling in the same market; is that right?

9 MR. FARUKI: Object. Asked and answered.

10 EXAMINER PRICE: I'm not sure she's asked
11 exactly the same question so I'll overrule the
12 objection.

13 THE WITNESS: Could you repeat the
14 question?

15 (Record read.)

16 A. Presumably, yes.

17 Q. Presumably there's an Ohio -- is there an
18 Ohio SREC market, Ms. Seger-Lawson?

19 A. Yes, but we could sell into PJM, we could
20 sell them into MISO. I'm not sure in your
21 hypothetical what market we're selling them into.

22 Q. Forget the hypothetical. There is a
23 solar renewable energy credit market for in-state
24 Ohio solar RECs today; is that correct?

25 A. Yes, people need Ohio solar RECs today.

1 Q. So when we talk about Dayton Power &
2 Light or any electric utility being able to sell
3 solar RECs into the market, they sell it into the
4 same Ohio in-state solar renewable energy credit
5 market that any solar developer that has a generating
6 facility in Ohio would also sell into. There's not
7 multiple markets, right?

8 A. I guess the reason I'm pausing is because
9 we could sell them to PJM or we could sell them
10 within MISO, so there are sort of two different
11 markets. It's the same Ohio solar RECs, but --

12 EXAMINER PRICE: Ms. Seger-Lawson, is
13 there more than one market you can sell your RECs
14 into?

15 THE WITNESS: Yes, I think there is.

16 Q. Ms. Seger-Lawson, you believe that there
17 are two separate markets? You think that Ohio's
18 solar market -- solar RECs can be sold in PJM as Ohio
19 solar credits?

20 MR. FARUKI: Object. Asked and answered.

21 Q. Or are you --

22 EXAMINER PRICE: She hasn't answered this
23 question yet.

24 A. I believe we can register them with PJM
25 or with MISO and we can sell them in either market.

1 Q. Okay.

2 MS. BOJKO: I actually was going to add
3 something to my question before the objection to
4 clarify.

5 Q. Is it your understanding that there are
6 two tracking systems that you can register and track
7 your solar RECs to? And isn't that distinguishable
8 from the market that they can be sold into?

9 A. I guess when I think of market, I think
10 of PJM or MISO, and I think that those are two
11 separate markets.

12 Q. You are aware that there's a solar
13 carve-out in the current law for Ohio in-state solar
14 RECs.

15 A. Yes.

16 Q. And so regardless of where you register
17 your RECs, whether it's in PJM, GATS is the system
18 it's called in PJM, or in the MISO tracking system,
19 that if you are going to sell your RECs in Ohio to
20 meet Ohio compliance for in-state Ohio solar RECs,
21 those RECs would be competing against each other; is
22 that fair?

23 A. Yes.

24 Q. And developers that sell into that same
25 market that we just established would thus be

1 competing with anybody else that sells their solar
2 renewable energy credits into the market; is that
3 correct?

4 A. Yes.

5 Q. And solar developers or CRES providers
6 that happen to build a solar generating facility or
7 even another EDU -- scratch that. Let's start over.
8 Strike that question.

9 A solar developer that sells its SRECs
10 into the Ohio market or another CRES provider that
11 builds a solar generating facility and sells its RECs
12 into the Ohio in-state solar market cannot get the
13 same cost recovery that Dayton Power & Light has
14 applied for in this case; is that correct?

15 A. Perhaps. But that doesn't change what
16 the law says that the utility can apply for.

17 EXAMINER PRICE: Don't interrupt the
18 witness. You can make your motion to strike if you
19 don't like -- if you think her answer is
20 nonresponsive.

21 MS. BOJKO: Okay. I move to strike --

22 EXAMINER PRICE: Granted.

23 MS. BOJKO: -- her response as
24 nonresponsive.

25 EXAMINER PRICE: I understand. It's

1 granted.

2 Ms. Seger-Lawson, please answer the
3 question.

4 MS. BOJKO: Can you repeat the question,
5 please?

6 (Record read.)

7 A. That's correct.

8 Q. And regardless of the outcome of this
9 proceeding, it is Dayton Power & Light's intent
10 moving forward to use any renewable energy credits
11 generated from the solar facility to meet compliance
12 with the RPS standards that are in 4928.64; is that
13 correct?

14 A. Yes.

15 MS. BOJKO: Thank you, your Honor. No
16 further questions.

17 EXAMINER PRICE: Just to be clear, your
18 answer was regardless of the outcome of this
19 proceeding, you intend to use the output from Yankee
20 for solar -- for compliance with the RPS standards.

21 THE WITNESS: Yes. But if we aren't
22 granted the authority to charge a nonbypassable
23 charge for Yankee, we would charge the cost of the
24 solar RECs through the AER.

25 EXAMINER PRICE: Okay. That's more clear

1 to me than what you said before. Thank you.

2 Do you want to take back your "I'm done,
3 your Honor"?

4 MS. BOJKO: Yes.

5 EXAMINER PRICE: You may take it back.

6 MS. BOJKO: I'm sorry, could you read her
7 last response back, please?

8 EXAMINER PRICE: Question and answer,
9 please.

10 (Record read.)

11 Q. (By Ms. Bojko) Just to finish your
12 statement, to meet the renewable portfolio standard
13 compliance requirements in the law; is that correct?

14 A. I'm not sure that I understand the
15 distinction that you're making.

16 Q. The reason you would use the output of
17 the solar generating facility of solar renewable
18 energy credits in order to satisfy DP&L's renewable
19 portfolio standard obligations under 4928.64?

20 A. And if we didn't get recovery of the
21 facility through the nonbypassable charge, we would
22 charge that cost through the AER.

23 Q. In order to meet the renewable portfolio
24 standard requirements, that's why you would do that;
25 is that correct?

1 A. Yes.

2 MS. BOJKO: Thank you.

3 Nothing further, your Honor.

4 EXAMINER PRICE: Mr. Williams?

5 MR. WILLIAMS: Thank you, your Honor.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Williams:

9 Q. Good afternoon, Ms. Seger-Lawson.

10 Could you please turn to page 17 of your
11 rebuttal testimony. And refer to line 5.

12 At lines 5 through 7 you testify that
13 DP&L proposed certain competitive enhancements
14 because it received feedback from CRES providers
15 about some of the enhancements that they would like
16 to see. Correct?

17 A. Yes.

18 Q. IGS, Interstate Gas Supply, also provided
19 feedback about including the purchase of receivables
20 program, didn't it?

21 A. That was through a settlement discussion,
22 so I'm not sure if I can or should say.

23 Q. Without disclosing where or how you were
24 made aware of the feedback, you can say that you
25 were, in fact, made aware of feedback, correct?

1 A. Yes.

2 Q. Staying on page 17 and referring now to
3 line 2, you testified that DP&L receives no benefit
4 itself from the six competitive enhancements,
5 correct?

6 A. That's correct.

7 Q. Referring now to line 8, you testify that
8 DP&L, nevertheless, agreed to implement these
9 competitive enhancements, correct?

10 A. Assuming we received cost recovery
11 through this case, yes.

12 Q. You can't tell me any specific criteria
13 that you evaluated to determine which enhancements to
14 implement, can you?

15 A. No. As we discussed last night, we had
16 discussions internally and evaluated the laundry list
17 that we received from all the CRES providers and
18 identified ones that we would be willing to
19 implement.

20 Q. But, to be clear, you cannot now point me
21 to any specific criteria that you evaluated in making
22 that determination, correct?

23 A. That's correct.

24 Q. Neither can you point me to any specific
25 criteria that you evaluated to determine why not to

1 implement a purchase of receivables program, can you?

2 A. Actually, yes, I can. We've had a number
3 of conversations about purchase of receivables; we
4 have found that they are programming intensive, very
5 costly, provides no benefit to the company, and, more
6 importantly, provides no benefit to customers.

7 Q. Do you have a copy of your deposition
8 with you, Ms. Seger-Lawson, from last night?

9 A. Yes.

10 Q. Could you please turn to page 84.
11 Starting at line 8, please tell me if I read this
12 correctly:

13 Question: "Okay. And when you say
14 'based on what we thought would make sense,' is that
15 a subjective standard based on something personal to
16 you or some feeling, whatever the case may be, or can
17 you cite me to some objective elemental criteria that
18 you looked at and said for these reasons we collect
19 these six?"

20 Answer: "I don't have a list of
21 criteria, if that's what you're asking."

22 MR. FARUKI: Objection. It's not
23 impeaching. The last question was different, your
24 Honor. He started out asking about what the company
25 selected. She answered that. But the question she

1 was just asked that he's attempting to impeach was
2 about what the company rejected, and that answer
3 doesn't deal with that.

4 EXAMINER PRICE: Sustained.

5 Q. So you're testifying that you did not
6 evaluate any specific criteria in determining to
7 implement the six competitive enhancements that you
8 agreed to implement but you somehow evaluated
9 specific criteria to determine which programs not to
10 implement.

11 A. Yes.

12 MR. WILLIAMS: Nothing further, your
13 Honor.

14 EXAMINER PRICE: Thank you.

15 Mr. Darr?

16 MR. DARR: Thank you, your Honor.

17 EXAMINER PRICE: Actually, Mr. Darr,
18 before we go on to you I just want to ask
19 Ms. Seger-Lawson a question I asked the witness today
20 earlier, and that goes back to sort of the question
21 that competitive enhancements don't appear to have
22 anybody that's interested enough to pay for them, do
23 they?

24 THE WITNESS: No.

25 EXAMINER PRICE: And so as I asked OCC,

2311

1 if the choice were the company to implement the
2 competitive enhancements and pay for them or not
3 implement the competitive enhancements at all, which
4 choice would the company choose?

5 THE WITNESS: We would not implement
6 them.

7 EXAMINER PRICE: Thank you.

8 Now, Mr. Darr.

9 Mr. Williams, do you want to take back
10 your "no further questions"? I let Ms. Bojko do it,
11 I'll let you do it too.

12 MR. WILLIAMS: Thank you. May I have a
13 moment to ruminate on your offer?

14 EXAMINER PRICE: Not too long.

15 MS. BOJKO: Your Honor.

16 Ms. Seger-Lawson, I can't hear you back
17 here. So I'm sorry for the interrupting, it's
18 because we can't hear you.

19 EXAMINER PRICE: The witness will project
20 her voice --

21 MS. BOJKO: Thank you.

22 EXAMINER PRICE: -- for the duration of
23 her cross.

24 MR. WILLIAMS: No, in fact, your Honor, I
25 think I am done.

1 EXAMINER PRICE: Excellent.

2 Mr. Darr, you've waited patiently.

3 MR. DARR: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Mr. Darr:

7 Q. Turning to page 1 of your testimony you
8 state that DP&L has a history of providing below
9 market generation rates to customers. And I think we
10 learned earlier today that you did not make a
11 comparison of this sort versus market prices is that
12 correct?

13 A. That's correct.

14 Q. I take it from your statement, however,
15 that you identify market prices that were higher than
16 the SSO rates that were approved as part of the ETP
17 and RSP settlements; is that correct?

18 A. My statement that the rates were below
19 market is reflective of the fact that there was
20 little choice that occurred in our service territory.

21 Q. Well, in fact, there was almost no market
22 in your service territory, correct?

23 A. That's correct.

24 Q. In fact, when you filed your, what I'll
25 call the first RSP in Case No. 02-2779, did you not

1 represent that the market was undeveloped such that
2 that was the reason why -- and that as a result
3 prices may exceed the unbundled generation prices
4 that DP&L was then offering?

5 A. That's correct.

6 Q. And, in part, some of this was driven by
7 the fact that there was no regional transmission
8 organizations at the time, correct?

9 A. I don't know that I made that conclusion.

10 Q. Well, are you aware of the fact that the
11 company represented that to the Commission at the
12 time?

13 A. I'd have to go back and review those
14 documents.

15 Q. Well, I think we'll have an opportunity
16 to do that.

17 MR. DARR: With the Court's permission,
18 I'd like to have a document marked as IEU Exhibit 29.

19 EXAMINER PRICE: So marked.

20 MR. DARR: With the Bench's permission.

21 EXAMINER PRICE: You can approach.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 EXAMINER PRICE: Mr. Darr, if you do have
24 a lot of documents, do you want to give all of them
25 to her at once?

1 MR. DARR: I'm not sure, your Honor.

2 EXAMINER PRICE: Okay. No problem. One
3 at a time is fine. We're doing just fine on time.
4 Ms. Yost stuck to her cross-examination estimate and
5 saved the day.

6 MR. ALEXANDER: Hey.

7 MS. YOST: I saved the day, Trevor.

8 EXAMINER PRICE: As did FES.

9 MS. YOST: Tomorrow's your day.

10 MR. SHARKEY: Day after day we're quick,
11 quick, quick, we get no appreciation, they come in on
12 time once or twice and they get all the love. How
13 did this happen?

14 (Laughter.)

15 EXAMINER PRICE: I think the Bench has
16 been quite laudatory of you sticking to your
17 estimates the last three days.

18 MR. SHARKEY: Thank you, your Honor, now
19 I feel more loved.

20 MS. BOJKO: Your Honor, you're still on
21 the record, do you know that?

22 Q. (By Mr. Darr) Do you have in front of you
23 what's been marked IEU No. 29?

24 A. It isn't marked but I can mark it that
25 way, yes.

1 Q. Do you recognize this as the application
2 in Case No. 02-2779-EL-ATA?

3 A. Yes.

4 Q. And, for the record, this is the first
5 what became a rate stabilization plan, correct?

6 A. I refer personally to the extent -- the
7 market development period case, the MDP.

8 Q. And in this proposal it was DP&L's
9 intention to, and in fact they did request that the
10 MDP, the market development period, be extended
11 through 2005, correct?

12 A. Yes.

13 Q. The reason for that, as set out in the
14 application is, in part, the lack of a competitive
15 market in the region, correct? In the DP&L region.
16 Specifically looking at paragraph 6(g) on page 3.

17 A. Yes, that's one of the reasons stated.

18 Q. Another reason that you were requesting
19 this extension was because of concerns demonstrated
20 by the California experience; do you see that in
21 paragraph 6(d) on page 3?

22 A. Yes.

23 Q. And the California experience was what?

24 A. That was where Electric Choice had been
25 introduced in California and market prices were

1 climbing out of control, in my opinion.

2 Q. Specifically in paragraph (f) you
3 indicate that the prices resulting from going to
4 market may exceed DP&L's unbundled generation rate,
5 correct?

6 A. Yes.

7 Q. In paragraph 7 you conclude that the
8 market at this point is dysfunctional, correct?

9 A. Yes.

10 Q. And, finally, in paragraph 8 you see on
11 page 4 that DP&L's representing that if, quote, "If
12 DP&L were to end the MDP, and thus as required by
13 statute, implement market-based retail rates, it is
14 unclear what 'market' the market-based rates would be
15 tied to or how the retail market-based rates would
16 be -- should be established," correct?

17 A. I'm sorry, where was that?

18 Q. It would be top of page 4, first complete
19 sentence.

20 A. Yes, I see that.

21 Q. And, in fact, the Commission subsequently
22 granted your request in Case No. 02-2779 to extend
23 the market development period through the end of
24 2005, correct?

25 A. Yes.

1 Q. And in the orders approving that you were
2 also directed to charge a price called the
3 market-based standard service offer to begin after
4 the conclusion of the MDP, correct?

5 A. I believe we, through a stipulation,
6 agreed that our MDP would end at the end of 2005 like
7 other Ohio utilities, and then we would go into a
8 rate stabilization period that would go from --
9 beginning of 2006 through 2008.

10 Q. And included as part of that is this
11 MBSSO, or market based standard service offer,
12 correct?

13 A. Yes, that's correct.

14 Q. And this was the price that DP&L was
15 authorized to charge as its generation rates in the
16 post market development period, correct?

17 A. Yes. And they were DP&L's, what we call
18 standard service offer rates today, same rates, and
19 they were deemed market based because parties did not
20 want us to conduct a competitive bid.

21 Q. And, in fact, the Commission specifically
22 made a finding at that point that the rates that it
23 was approving were the market based standard service
24 offer satisfying the statute, correct?

25 A. Yes.

1 Q. Now, that market based standard service
2 offer also allowed DP&L to incorporate any
3 transmission charges approved by FERC, correct?

4 A. I believe at that time transmission was
5 nonbypassable in DP&L's service territory.

6 Q. That doesn't really answer my question.
7 You were permitted under this order to
8 modify your rates to accommodate changes in FERC
9 transmission rates, correct? Do you recall?

10 A. I'd have to -- I'd have to look at the
11 documents to see what we were authorized to do.

12 MR. DARR: May I approach?

13 EXAMINER PRICE: You may.

14 MR. DARR: I assume based on prior
15 rulings we're not going to mark this as an exhibit or
16 seek admission, correct?

17 EXAMINER PRICE: A Commission order?

18 MR. DARR: Yes.

19 EXAMINER PRICE: That's correct.

20 A. Okay, I see what you're referring to.

21 Q. Am I correct that DP&L was authorized to
22 adjust its transmission rates to incorporate certain
23 applicable FERC-approved transmission rates?

24 A. Yes. That was part of the stipulation
25 and that was because DP&L had not yet joined an RTO.

1 Q. And as we discussed earlier, your
2 distribution rates at this point were frozen,
3 correct?

4 A. Yes.

5 Q. And generation rates were going to
6 continue with exact -- with one exception?

7 A. Yes.

8 Q. And that exception was the inclusion of
9 11 percent RSS with the 11 percent calculated based
10 on the generation rates as they existed on January 1,
11 2004, correct?

12 A. Yes.

13 Q. Now, these rates could also be reviewed
14 to determine whether or not they remained market
15 based, correct? And I'm speaking now specifically
16 with regard to the generation rate.

17 A. I'm sorry, can I have the question read
18 back?

19 Q. Let me restate it.

20 The rates were subject to review and
21 could be tested against a competitive bidding
22 process, correct?

23 A. I don't remember that.

24 Q. If it would help refresh your
25 recollection, take a look at the end of the paragraph

1 on page 13.

2 EXAMINER PRICE: Mr. Darr --

3 Q. The long paragraph at the bottom of the
4 page.

5 EXAMINER PRICE: -- do you have a copy of
6 that for the Bench?

7 MR. DARR: Certainly.

8 EXAMINER PRICE: I'm feeling left out
9 here.

10 A. Yes, this says that the Commission may
11 order a competitive bidding process to I guess
12 measure whether or not DP&L's rates are within market
13 range.

14 Q. So the concern, if I understand it
15 correctly, was that if market prices as demonstrated
16 by competitive bid were below DP&L's then-authorized
17 market based standard service offer, then the
18 Commission could come back in and terminate the RSP,
19 correct?

20 A. I'm not clear, based on what this says,
21 whether or not they would terminate all aspects of
22 the ESP or if they would do something else.

23 Q. At this time it wouldn't have been the
24 ESP, so let's make sure the record is clear on that.

25 A. I'm sorry. If they would terminate the

1 rate plan. It's not clear to me based on what this
2 says.

3 Q. Well, for the record, doesn't the order
4 state in the last sentence of the paragraph we were
5 looking at on page 13 "The Commission may also
6 terminate all provisions of the stipulation and order
7 DP&L to proceed according to the post MDP rules
8 established by the Commission"?

9 A. Yes, that's what it says, but I wasn't --
10 it's not clear as to if that's -- if that's directly
11 related to the process of conducting a competitive
12 bid.

13 Q. Fair enough.

14 Now, in 2005 the RSP arrangement was
15 modified again, correct?

16 A. In 2005 there was a requirement that we
17 demonstrate the cost increases that the company had
18 incurred prior to charging the RSS.

19 EXAMINER PRICE: What types of costs were
20 those?

21 THE WITNESS: They were fuel and
22 environmental related.

23 Q. And you filed a case in 2005 which
24 ultimately became Case No. 05-276-EL-AIR, correct?

25 A. Yes.

1 Q. And this would be the, do you refer to
2 this as the RSP case?

3 A. Yes.

4 Q. Just so we're on the same page.

5 A. Okay.

6 Q. And this case was also resolved by a
7 stipulation, correct?

8 A. Yes.

9 Q. Now I want to explore with you
10 your contemporaneous impression of the development of
11 the market in 2005. Now, in that case you filed
12 testimony in support of the stipulation, correct?

13 A. Yes.

14 MR. DARR: I'd like to have marked as IEU
15 Exhibit 30 another document, your Honor.

16 EXAMINER PRICE: It will be so marked.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Do you have in front of you what's been
19 marked IEU-Ohio Exhibit 30?

20 A. Yes.

21 Q. And could you identify this for us,
22 please?

23 A. This is my testimony in support of the
24 stipulation and recommendation in Case No.
25 05-276-EL-AIR.

1 Q. And if you turn to page 2, line 32,
2 there's a question "Can you describe the current
3 market conditions in DP&L's service territory?" And
4 then we have your response which goes from page 2
5 through the bottom of page 3, correct?

6 A. Yes, that's correct.

7 Q. And without belaboring this too much, we
8 can pretty much conclude that there was not a whole
9 lot going on in the DP&L service territory in terms
10 of competition, correct?

11 A. That's correct.

12 Q. In fact, you report there are four
13 unaffiliated CRES providers, I'm now looking at page
14 3, line 47, who are currently registered to conduct
15 business, only one is actually providing competitive
16 retail service to customers and one of the four is
17 leaving Dodge, correct?

18 A. Yes, essentially that's what it says.

19 Q. And if we go to the bottom of the page,
20 again page 3 of this exhibit, line 57, you see that
21 "there is only one CRES Provider that is unaffiliated
22 with DP&L that is serving seven small business
23 customers in DP&L's service territory, reflecting
24 .03 percent of the retail electric sales of DP&L's
25 system."

1 And that was your testimony in that case,
2 correct?

3 A. Yep.

4 EXAMINER PRICE: In fact, though, when
5 you look at your fifth point, there were thousands of
6 residential customers that were interested in
7 switching.

8 THE WITNESS: Yes.

9 EXAMINER PRICE: And no CRES provider bid
10 on those thousands of residential customers despite
11 extremely low customer acquisition costs.

12 THE WITNESS: Right.

13 MR. DARR: You actually anticipated my
14 next question.

15 EXAMINER PRICE: Sorry.

16 MR. DARR: Thank you.

17 Q. (By Mr. Darr) Now, in 2005 DP&L initiated
18 the meetings with the signatory parties to extend the
19 rate stabilization plan, correct?

20 If it helps, take a look at page 5, line
21 85.

22 A. And what was the question?

23 Q. It was DP&L that initiated the settlement
24 discussions, correct?

25 A. Yes. We initiated the settlement

1 discussions in this case.

2 Q. And it was DP&L that circulated the
3 settlement among the parties?

4 A. Yes.

5 Q. And is it fair to say that, again, the
6 rates remained frozen in the DP&L system through
7 2010? That was part of the agreement, correct?

8 A. Yes. But I guess I would add that the
9 parties to that case wanted us to extend those rates
10 and because of the lack of switching, DP&L's rates
11 were below market.

12 MR. DARR: Again, your Honor, I'd move to
13 strike, nonresponsive to the question, everything
14 after "yes."

15 EXAMINER PRICE: Granted.

16 Q. Now, in terms of the rate plan that
17 emerged from the RSP, this concluded a continuation
18 of the standard service offer also known as the
19 market based standard service offer, correct?

20 A. I'm not sure if we still referred to it
21 as that in this case or not.

22 Q. Take a look at page 6, I believe it's
23 line 102. Is the answer to my question "yes"?

24 A. Yes.

25 Q. You also continued the unavoidable rate

1 stabilization charge which was 11 percent of DP&L's
2 generation rate, correct?

3 A. This stipulation established the rate
4 stabilization charge and we began charging it the
5 following year.

6 Q. And it was 11 percent of the existing
7 generation rate, correct?

8 A. Yes.

9 Q. You also added an environmental
10 investment rider at this time, correct?

11 A. Yes.

12 Q. And for the beginning period of the
13 stabilization rider, that charge was going to be
14 nonbypassable, correct?

15 A. The rate stabilization charge was
16 nonbypassable. The EIR was initially going to be
17 nonbypassable, but the Commission changed that in the
18 order.

19 Q. And, in fact, the change or modification
20 that the Commission granted was that in the last two
21 years of the charge it would be bypassable, correct?

22 A. Actually, they made the whole thing
23 bypassable.

24 Q. Once again, the Commission retained
25 authority to terminate the rate stabilization plan if

1 the market-based rates did not reasonably reflect the
2 rates established by the stipulation, correct?

3 A. I'm not sure. I don't see that.

4 Q. Well, is there -- would the order help
5 you recall?

6 A. I just, I don't see it in this document.

7 Q. No, you won't find it in there. Which
8 brings me to my second question.

9 Do you have any current recollection of
10 whether or not the Commission retained jurisdiction
11 to terminate the RSP terms?

12 A. I don't know.

13 Q. Would taking a look at the order help you
14 recall?

15 A. Yes.

16 EXAMINER PRICE: Let's hope the order
17 thoroughly summarized the stip.

18 Q. Take a look at pages 3 and 4, I think
19 it's paragraph 6 of the summary.

20 A. Page 4, paragraph 6 states, in part, "the
21 Commission may terminate the rate stabilization
22 period and trigger a competitive bidding process if
23 market-based rates do not reasonably reflect the
24 rates established by the stipulation."

25 Q. And it's fair to say at this point that,

1 at least within the DP&L service territory, a market
2 for generation services was somewhat ill-liquid?

3 THE WITNESS: I'm sorry, can you reread
4 the question?

5 (Record read.)

6 A. I'm not sure what you mean by
7 "ill-liquid."

8 Q. Undeveloped.

9 A. Yes. I mean, the Commission never did a
10 competitive bid to measure whether or not our rates
11 were within market. And if our rates were below
12 market, they wouldn't conduct the competitive bid.

13 Q. Now, you discussed with Mr. Pritchard the
14 other day that DP&L was authorized under the ETP to
15 collect certain transition charges, correct?

16 A. Yes.

17 Q. And those transition charges included
18 both those related to what generally have become
19 known in the parlance as stranded costs and some of
20 it was related to -- stranded costs related to
21 generation resources and some related to regulatory
22 assets, correct?

23 A. Yes.

24 Q. And, in fact, DP&L, with Commission
25 authorization, collected those RTC and CTC charges

1 during the first three years of its electric
2 transition plan, correct?

3 A. Yes, that's correct.

4 Q. And then it continued to collect those
5 charges because they were rolled up into the market
6 based standard service offer by the 2002 case,
7 correct?

8 A. No. I believe there was a Commission
9 order that said there will no longer be transition
10 charges. So I'm not sure --

11 Q. The amount was included in the --

12 MR. FARUKI: Your Honor, I don't think
13 she was done with her answer.

14 EXAMINER PRICE: Okay. Let's finish your
15 answer if you want and then we'll come back and ask a
16 question.

17 MR. DARR: I apologize for interrupting,
18 I thought she was done.

19 MR. FARUKI: May I have the question and
20 so much of her answer read back?

21 EXAMINER PRICE: You may.

22 (Record read.)

23 A. So at some point the company no longer
24 collected transition charges.

25 Q. Did it collect an equivalent amount as

1 part of its market based standard service offer, if
2 you know?

3 A. I don't know.

4 Q. We can go back and check the orders to
5 see how that was handled, correct?

6 A. Yes.

7 Q. And is it fair to say that as prices were
8 increased, for example the inclusion of the RSC, that
9 there was no adjustment in the base generation prices
10 for the collection of that RSC?

11 A. There was a separate charge established
12 for the RSC.

13 Q. And that was over and above the existing
14 generation prices, correct?

15 A. Yes. We demonstrated that there were
16 cost increases for fuel and environmental over and
17 above a base amount.

18 Q. And would it be fair to say that there's
19 no testimony that you're offering today that the
20 unweighted average annual ROE of DP&L for the period
21 2001 through 2011 was any more or less than
22 19.4 percent? Correct?

23 A. I don't know what the ROEs were.

24 Q. Now, at page 5 of your testimony you
25 indicate that IEU has taken some inconsistent

1 positions with regard to structural separation in
2 this case. Am I correctly summarizing that?

3 A. Yes, I believe that IEU is taking a
4 inconsistent position in this case as it did in 2007.

5 Q. And it's fair to say that the General
6 Assembly did not repeal, it did modify but it did not
7 repeal the section that you're referring -- that
8 Mr. Randazzo was referring to, correct?

9 A. I think that it did, actually.

10 Q. It repealed that section?

11 A. The section that he was specifically
12 relating to was whether or not utilities have the
13 ability to transfer their generation assets without
14 seeking approval from the PUCO.

15 Q. Right. And the section was modified, if
16 you know, was modified to require Commission review,
17 correct?

18 A. Right. So I think --

19 Q. The section wasn't stricken from the
20 code.

21 A. Right.

22 Q. I didn't think this was going to be this
23 hard, but I think we got confused on the word
24 "repealed."

25 Can you point to me a specific provision

1 or line in IEU's testimony that says that IEU is
2 requesting or -- the Commission to find that DP&L
3 should transfer its assets to a third party?

4 A. I'm sorry, can I get that question again?

5 Q. Sure. Let me rephrase it because it was
6 a little clunky.

7 Can you point to me any place in
8 Mr. Murray's testimony, Mr. Hess's testimony, or
9 Mr. Bowser's testimony where IEU has taken the
10 position that generation assets should be
11 structurally separated?

12 A. I understood that to be IEU's testimony.
13 I don't have in front of me a cite, but I understood
14 it in this case that IEU was taking the position that
15 we should have transferred generation assets a long
16 time ago.

17 Q. And, again, I'm asking for a specific
18 reference; can you give that to me today?

19 MR. FARUKI: I'll object. She just said
20 she doesn't have the testimony in front of her.

21 EXAMINER PRICE: I'm going to sustain the
22 objection.

23 MR. DARR: Fine, I'll move on, your
24 Honor.

25 EXAMINER PRICE: Just to be clear, if you

1 had the testimony in front of you, could you show us
2 the cite or you just don't -- the answer you're
3 giving is that was your overall impression and you
4 don't have any knowledge of a specific cite?

5 THE WITNESS: That was my overall
6 impression and I'd have to look through it to find
7 what gave me that impression.

8 Q. You rely on the -- I want to move on to
9 the, and I'm -- I want to move on to the
10 reconciliation rider. You rely on the FirstEnergy
11 and Duke proceedings as a basis for the conclusion
12 that the Commission has allowed a circuit breaker
13 provision to be put in place. This is page 6, line
14 16 of your testimony. Correct?

15 A. Yes.

16 Q. And both of those cases were stipulated,
17 correct?

18 A. I don't know that.

19 Q. Well, the first case, the Duke case
20 is 11-3549, are you aware of whether or not that case
21 was stipulated?

22 A. Yes, that was stipulated.

23 Q. And did you review that stipulation?

24 A. Yes, I did.

25 Q. So you're aware that the stipulation

1 states that it's submitted for the purposes of those
2 proceedings only and neither this stipulation nor any
3 Commission order considering a stipulation shall be
4 deemed binding in any other proceeding, nor shall
5 this stipulation or any such order be offered or
6 relied upon in any other proceedings except as
7 necessary to enforce the terms of this stipulation?
8 Do you recall that provision?

9 A. I understand that provision to apply to
10 those parties that signed it.

11 Q. That wasn't my question, ma'am.

12 Are you aware that that stipulation
13 contains that provision?

14 A. Yes.

15 Q. And I think we can agree that DP&L's ESP
16 proceeding is not a proceeding to enforce the terms
17 of the Duke stipulation, correct?

18 A. I was simply looking at it as guidance as
19 to whether or not a provision that the company would
20 propose would be acceptable.

21 Q. Again, not an answer to my question.

22 My question was: Can we agree that
23 DP&L's ESP proceeding is not a proceeding to enforce
24 the terms of the Duke stipulation?

25 A. That's correct.

1 Q. DP&L is not a party to that compromise,
2 correct?

3 A. That's correct.

4 Q. Now, did you -- other than the circuit
5 breaker provision, did you review any of the other
6 provisions of that settlement?

7 A. I read the whole thing when it was
8 submitted.

9 Q. So you're aware that Duke limited its --
10 the term of its ESP to a period that would extend no
11 further than May 31st, 2015, correct?

12 A. I would have to review the document
13 before I could agree to that.

14 Q. Well, I have a copy of the stipulation
15 here. Would you like to review it?

16 A. If you're going to ask me more questions
17 about what it contains, yes.

18 Q. Sure. Directing your attention to
19 page 4, paragraph 1.A.

20 EXAMINER PRICE: Did you want to mark
21 this, Mr. Darr?

22 MR. DARR: It depends on how you want to
23 handle it, your Honor.

24 EXAMINER PRICE: If you're going to ask
25 us to take administrative notice of it, we would like

1 it marked. If you just want to have her see if it
2 refreshes her recollection and you're not going to
3 seek administrative notice, then we don't need to.

4 MR. DARR: I think we can do this by
5 administrative notice.

6 EXAMINER PRICE: Okay.

7 MR. DARR: But I am going to have a
8 number of questions about what's contained in this
9 treatment.

10 EXAMINER PRICE: We'll go ahead and mark
11 this as IEU 31.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Do you have in front of you what's been
14 marked as IEU 31?

15 A. Yes.

16 Q. And is this the stipulation that you
17 reviewed for the Duke case?

18 A. Yes.

19 Q. This is the stipulation that you're
20 relying upon for the reference to the circuit breaker
21 testimony starting on page 6, line 16, correct?

22 A. Yes.

23 Q. And am I correct that the stipulation
24 provided that it would terminate on 5/31/15?

25 MR. FARUKI: I'm sorry, your Honor, may I

1 have the reference again to a page?

2 MR. DARR: Sure. Page 4, paragraph 1.A.

3 MR. FARUKI: Thank you.

4 A. Yes, it says that ESP term will be
5 through May 31st, 2015.

6 Q. And would you agree that in
7 paragraph 1.B. Duke agreed to use auction-based
8 pricing after 5/31/15 if no new standard service
9 offer was in place?

10 A. I think what it says is if this
11 stipulation is not accepted or if it's modified and
12 Duke withdraws the application, then it would use
13 auction-based pricing.

14 Q. So if there was no new SSO in place, the
15 auction pricing would continue, correct?

16 A. Yes.

17 Q. Duke also agreed to procure all of its
18 supply through an auction to set rates based on the
19 auction clearing prices pursuant to section 2.A.
20 and C. found on page 7, correct?

21 A. I'm sorry, what was the question again?

22 Q. Am I correct that Duke agreed to procure
23 all supply through an auction and to set rates based
24 on the auction clearing prices pursuant to section 2,
25 subsections A and C?

1 A. Yes.

2 Q. Duke also agreed that currently-owned
3 Duke generation would not participate in the SSO
4 auction according to section 2.F. on page 9.

5 A. Section F says "Affiliates and
6 subsidiaries of Duke shall be permitted to
7 participate and compete in SSO auctions...."

8 Q. Yeah, and if you go down a little bit
9 further, the line beginning "Notwithstanding the
10 above," would you look at that.

11 A. Yes, they agreed that for a period of
12 time they would not participate in the SSO auctions.

13 Q. Duke also agreed to supply capacity
14 resources to PJM for CRES providers pursuant to
15 Section 4.A. on page 12, correct?

16 A. Yes.

17 Q. Duke also agreed to terminate its FRR
18 election pursuant to section 5.A. on page 13,
19 correct?

20 A. Yes.

21 Q. Now, for all of these things Duke secured
22 a nonbypassable rider of \$110 million annually,
23 correct?

24 MR. FARUKI: I'll object to the form.
25 It, purports -- when he says "for all these things,"

1 it's describing the quid pro quo and she hasn't had
2 time to review all of this to tell if that's so.

3 EXAMINER PRICE: Sustained. Can you
4 rephrase it?

5 MR. DARR: Sure.

6 Q. Duke secured an agreement to a
7 nonbypassable rider of \$110 million annually,
8 correct?

9 MR. FARUKI: Is there a page reference,
10 your Honor?

11 MR. DARR: Pages 15 and 16.

12 A. Yes, that's correct.

13 Q. Duke also made several community
14 commitments as part of this agreement, correct?
15 These would be found on pages 15 through 25.

16 A. Yes, I recall that.

17 Q. Finally, Duke, at page 25, agreed to
18 transfer its generation assets on or before
19 December 31st, 2014, correct?

20 A. Yes.

21 Q. And are you aware of any modifications as
22 to the provisions that we've just discussed that were
23 ordered by the Commission with regard to this
24 stipulation?

25 A. I don't know. I'd have to look at the

1 order.

2 Q. Are you aware of any modifications of the
3 statement that the stipulation shall not be deemed
4 binding in any other proceeding nor shall it be
5 offered or relied upon in any other proceeding?

6 A. I don't know.

7 Q. I'm sorry, I missed your answer.

8 A. I don't know.

9 Q. Now, are you aware that the FirstEnergy
10 provision that you mention in your testimony
11 concerning circuit breakers was also the result of a
12 stipulation?

13 A. I believe that it was.

14 Q. And this would be in Case No. 12-20 --
15 excuse me, 12-1230-EL-SSO, correct?

16 A. Yes.

17 Q. Did you review that stipulation in
18 preparing your testimony?

19 A. I don't remember reviewing that
20 stipulation. I remember looking at the tariff sheet
21 that was handed to me before.

22 Q. Are you aware that the stipulation
23 contains a provision in it that it too is submitted
24 for the purpose of that proceeding only and is not
25 deemed binding in any other proceeding and except as

1 otherwise provided herein, nor is it to be offered or
2 relied upon in any other proceeding except as
3 necessary to enforce the terms of the stipulation?

4 A. I don't know.

5 Q. Is it fair to say you don't know any of
6 the other terms that are contained in terms of the
7 commitments made by FirstEnergy or the obligations
8 undertaken by customers with regard to that
9 stipulation?

10 A. It's been a long time since I reviewed
11 the stipulation for FirstEnergy.

12 Q. So you have reviewed it.

13 A. Yes.

14 Q. But you don't recall currently what the
15 terms of that stipulation are; is that correct?

16 A. That's correct.

17 Q. If we wanted to figure that out, rather
18 than go through that process again with this
19 stipulation as we just did with Duke, we could look
20 at that stipulation and identify the different
21 provisions in it, correct?

22 A. Yes.

23 Q. And we could also look at the
24 Commission's order and determine whether or not any
25 of those major provisions in that stipulation,

1 including the one with regard to use of it, had been
2 adopted and/or modified, correct?

3 A. Yes.

4 Q. And as we sit here today do you know
5 whether or not any of those major provisions
6 including the one with regard to use of the
7 stipulation were adopted or modified?

8 A. I don't know.

9 Q. Now, with regard to the RR, the
10 reconciliation rider, there are existing balances
11 that would be carried over into the future, correct?
12 You've got some reconciliation balances outstanding,
13 correct?

14 A. I'm not sure I follow that question.

15 Q. You've got some unrecovered balances.

16 A. We have an unrecovered balance in the
17 TCRR.

18 Q. Do you also have one in the RPM?

19 A. Yes, I believe we do.

20 Q. And both of those currently exceed
21 10 percent; is that correct? The 10 percent
22 threshold that you're recommending?

23 A. I haven't focused on the RPM one but it's
24 possible it's above 10 percent.

25 Q. If the Commission granted the order that

1 created the RR as you're proposed, there would be
2 customers charged for those existing balances who
3 would not currently be liable for those amounts,
4 correct?

5 A. I'm not sure what you mean by "liable for
6 those amounts."

7 Q. Well, you would be changing some of the
8 amounts contained in the current uncollected balance,
9 those would be spread out over both nonshopping
10 customers who are currently responsible for them and
11 shopping customers who are currently not responsible
12 for them, correct?

13 A. Some of the customers that are currently
14 shopping could have caused those balances to be
15 incurred.

16 Q. I understand that you believe that to be
17 the case. We haven't identified any of those
18 customers at this point, have we?

19 A. The customers that have recently shopped
20 would have caused those costs to be incurred.

21 Q. And we also know from the testimony of
22 Mr. Hoekstra that there are a number of customers who
23 are on multiyear contracts, correct?

24 A. I believe that to be true.

25 Q. And those customers, any of those

1 customers that are charged and who also have
2 contracts that extend more than one year back, they
3 would not necessarily be -- they would not be
4 responsible under the current rate structure for
5 those charges, correct?

6 A. I would have to track the deferral
7 balances back to give you a fair answer on that.

8 Q. As we sit here today those customers
9 would not be responsible for the deferral balance,
10 correct?

11 A. Those customers are not responsible for
12 paying the bypassable charges in place today.

13 Q. The question -- your answer was better
14 than my question. They could not be charged, could
15 they, under the current tariff structure?

16 A. No.

17 Q. You currently file annually to true up
18 your TCRR; is that correct?

19 A. Yes.

20 Q. And I believe you indicated earlier today
21 in response to a question, I believe from
22 Mr. Alexander, that you do a mid-year check-in; is
23 that correct?

24 A. Yes.

25 Q. And when you did that mid-year check-in,

1 you chose not to file an additional proceeding with
2 the Commission to modify your TCRR, correct?

3 A. When I think of the mid-year check-in, I
4 think of two years back when we did actually modify
5 the rate, so I can't recall whether the mid-year
6 check-in happens every year or if it was just that
7 year.

8 Q. I assume you monitor these numbers pretty
9 closely, correct?

10 A. Yes.

11 Q. And at some point over the past year you
12 realized that whatever efforts you had made to burn
13 down that deferral were not working, correct?

14 A. Yes.

15 Q. That was "yes"?

16 A. Yes.

17 Q. And when you recognized that, you did not
18 file for a modification of your TCRR, correct?

19 A. We did not in the most recent year but we
20 did in the year prior.

21 Q. And in both years you ended up with what
22 looks like an \$8 million balance, correct?

23 A. Yes.

24 Q. Now, you indicate that Mr. Bowser, with
25 regard to the AER-N on page 11, line 17 of your

1 testimony, misconstrues the requirements of section
2 4928.143(B) (2) (c) which provides that no surcharge
3 should be authorized unless, and then I'm quoting
4 you, "there is a need for the facility based on
5 resource planning projections submitted by the EDU."

6 Am I correct that the phrase that you
7 quote from the statute is not the whole sentence in
8 Section 4928.143(B) (2) (c) related to the resource
9 planning requirement?

10 A. That's correct, that's only part of the
11 sentence.

12 Q. In fact, the whole sentence reads, quote,
13 "However, no surcharge shall be authorized unless the
14 Commission first determines in the proceeding that
15 there is a need for the facility based on resource
16 planning projections submitted by the EDU."

17 Have I read that correctly? If you can't
18 find yours, I have a copy of it.

19 A. The sentence says "However, no surcharge
20 shall be authorized unless the Commission first
21 determines in the proceeding that there is need for
22 the facility based on resource planning projections
23 submitted by the electric distribution utility."

24 And I think that that is enumerated by
25 the Commission's Ohio Administrative Code rules that

1 say if a utility is seeking authority under
2 divisions (B) (2) (b) of 4928.143, the application must
3 include a description of the projected cost of the
4 proposed facilities, and the need for the proposed
5 facilities must have already been reviewed and
6 determined by the Commission through an integrated
7 resource planning process filed pursuant to
8 4901:5-5-05 of the Ohio Administrative Code.

9 Q. So the answer to my question is, yes, I
10 read that statement correctly.

11 A. You read the statement correctly but I
12 believe that it's required by a long-term forecast
13 report.

14 Q. And is it fair to say that you're not
15 offering a legal opinion as to whether the statute or
16 the Commission rule that is implementing that statute
17 controls when the rule and the statute apparently
18 conflict?

19 A. I do not agree with that.

20 Q. So you are offering a legal opinion.

21 A. I'm confused by your question.

22 Q. I asked you if you were offering a legal
23 opinion as to what happens when a statute and a rule
24 conflict.

25 EXAMINER PRICE: And she said "I do not

1 agree with that."

2 MR. DARR: What is she disagreeing with,
3 that she's not offering a legal opinion or --

4 EXAMINER PRICE: Well, I think you should
5 ask her that question, but I think that the record
6 does not make very clear here as to what you're
7 trying to get at.

8 MR. DARR: Sure, I'll ask it again.

9 Q. Are you offering a legal opinion as to
10 what happens when a statute and a rule potentially
11 conflict?

12 A. I don't know.

13 Q. You don't know. You don't know whether
14 or not you're offering a legal opinion?

15 A. I don't know what happens when the
16 statute and the Ohio Administrative Code rules
17 conflict.

18 Q. So I take it that you are not offering a
19 legal opinion; is that correct?

20 A. I'm not offering a legal opinion.

21 Q. Now, in your testimony you state that,
22 and this is on page 12, lines 17 through 20, the
23 costs are bypassable, the statute which applies to
24 the bypassability applies only to administrative
25 costs of purchasing the RECs and the cost of

1 purchasing the RECs themselves. Did I state that
2 correctly?

3 A. I'm sorry, where are you?

4 Q. Page 12, lines 17 through 20.

5 THE WITNESS: Could you reread the
6 question?

7 (Record read.)

8 A. That is my definition for compliance
9 costs.

10 Q. And you go on to state that the new
11 generation facility is not a renewable compliance
12 cost, correct?

13 A. That's correct.

14 Q. If we take a look at Subsection (E) of
15 4928.64, it refers to all costs incurred by the
16 electric distribution utility in complying with the
17 requirements of that section, correct?

18 A. What section of the code were you looking
19 at?

20 Q. 4928.64 (E) .

21 A. I don't think I have that in front of me.

22 Q. I'm sorry?

23 A. I don't think I have that in front of me.

24 Q. I have a copy for you here.

25 A. I have that section.

1 Q. Yeah, and it states that all costs of
2 compliance, correct?

3 A. Yes, again, all compliance costs. Yes.

4 Q. So I take it from your meaning that "all
5 costs" means administrative costs of purchasing the
6 RECs and the cost of the RECs.

7 A. All costs incurred in complying with the
8 requirements of this section.

9 Q. And, again, going back to your testimony,
10 what you mean by that is administrative cost of
11 purchasing the RECs and the cost of the RECs
12 themselves, correct?

13 A. Yes.

14 Q. By this interpretation that would
15 specifically exclude the cost of the underlying
16 generation, renewable generation asset, correct?

17 A. Yes.

18 Q. So the cost of the credits would be
19 bypassable but the underlying energy assets, such as
20 a solar plant, could be recovered by your
21 interpretation on a nonbypassable basis if it
22 otherwise met the requirements of section
23 4928.143(B)(2)(c), correct?

24 A. Yes.

25 MR. DARR: I'd like to have a document

1 marked as IEU Exhibit 32.

2 EXAMINER PRICE: It will be so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 (Discussion off the record.)

5 EXAMINER PRICE: In all the chaos over 31
6 you did not give the Bench a copy of 32.

7 MR. DARR: I needed an extra copy, your
8 Honor, I had to go back and get one.

9 EXAMINER PRICE: Thank you.

10 Q. (By Mr. Darr) Do you have in front of you
11 what's been marked as IEU Exhibit 32?

12 A. Yes.

13 Q. And these, do you recognize these as the
14 comments filed by Dayton Power & Light Company in
15 Case No. 12-3151-EL-COI?

16 A. Yes.

17 Q. I'd like you to turn to page 5 and look
18 under sub (J). Am I correct that DP&L in response to
19 the Commission investigation stated as follows:

20 "Senate Bill 221 and specifically the requirement
21 that a certain portion of the utility's load be
22 served" by -- excuse me, "from a renewable energy
23 source are currently bypassable through the
24 Alternative Energy Rider"? Did I read that
25 correctly?

1 A. Yes. The compliances costs are
2 bypassable through the AER.

3 Q. Do you see anywhere in that first
4 sentence "compliance" or any limitations to the costs
5 that you've identified?

6 A. No.

7 Q. If we read on in the next line it states,
8 does it not: "The implication of making the AER a
9 bypassable rider provides a disincentive to both
10 distribution utilities and CRES providers from
11 investing in renewable energy projects or entering
12 into long term renewable energy credit contracts due
13 to the fact that customer switching causes
14 fluctuations in the EDUs and CRES providers renewable
15 requirements."

16 Did I read that correctly?

17 A. Yes.

18 Q. And then it specifically requests that
19 the charges be made nonbypassable, correct?

20 A. Yes. This is in response to the
21 Commission's investigation as to what changes should
22 be made to current environment, and the suggestion is
23 if you want utilities to invest in renewable
24 generation, you should make them nonbypassable
25 charges.

1 Q. Moving on to the standard service or,
2 excuse me, the stability service rider on page 23 of
3 your testimony, there's nothing in your testimony
4 that the current system is incapable of providing
5 service to customers, is there?

6 A. You're on what page?

7 Q. Page 23 of your testimony.

8 MR. FARUKI: May I have that question
9 again, please?

10 EXAMINER PRICE: You may.

11 (Record read.)

12 MR. FARUKI: Thank you.

13 A. Was the question there's nothing in the
14 current system?

15 Q. The current distribution and generation
16 and transmission system, you're providing adequate
17 service currently, are you not?

18 A. I'm sorry, I still don't understand the
19 question.

20 Q. Is there any question at this point that
21 DP&L is satisfying its service reliability
22 requirements?

23 A. Yes, DP&L is satisfying its reliability
24 distribution service requirements.

25 Q. You're currently paying your bills,

1 correct?

2 A. I don't think I'm the witness to ask that
3 question of.

4 Q. I'm sorry?

5 A. I don't think that I'm -- that I'm
6 responsible for that kind of function at the company.

7 Q. So are you aware of any testimony in this
8 case that demonstrates that DP&L is not paying its
9 bills?

10 A. I'm not aware, but what I'm saying is I'm
11 not the person to ask that question of.

12 Q. You are also seeking to -- through
13 this -- strike that.

14 You're not under any investigation
15 currently with regard to distribution outages or
16 reliability concerns, are you? And when I say "you,"
17 I mean DP&L.

18 A. No.

19 MR. DARR: I have nothing -- one moment,
20 please.

21 That's all I have, thank you.

22 EXAMINER PRICE: Thank you.

23 Mr. Yurick?

24 MR. YURICK: Can I ask just a few
25 questions, your Honor.

1 EXAMINER PRICE: Of course.

2 MR. YURICK: Briefly.

3 - - -

4 CROSS-EXAMINATION

5 By Mr. Yurick:

6 Q. Ms. Seger-Lawson, I'm going stay on
7 page 23 of your testimony, so the question that
8 begins on line 12, "Is the SSR a charge that would
9 have the effect of stabilizing and revising certainty
10 regarding retail electric service?" Do you see that
11 question?

12 A. Yes.

13 Q. And at the end of your answer which
14 starts at the very end of line 17 and goes to line 19
15 says "...and because the SSR is important to allowing
16 the multiyear ESP, which itself provides certainty
17 regarding retail electric service." Do you see that?

18 A. Yes.

19 Q. But if you were to have a multiyear ESP
20 without an SSR, that would provide stability too
21 because it would be a multiyear ESP, right?

22 A. No. I would disagree with that.

23 Q. Well, it seems to me that your answer, is
24 it not your statement there that a multiyear ESP test
25 provides certainty regarding retail electric service?

1 A. No, I disagree with that. What it says
2 is because the SSR is important to allowing a
3 multiyear ESP.

4 Q. So is it your suggestion that without an
5 SSR, DP&L would be unable to enter into a multiyear
6 ESP?

7 A. I think without an SSR, a multiyear ESP
8 would not provide stability.

9 Q. On line 6 of that page you say "Is the
10 SSR a" --

11 (Discussion off the record.)

12 MR. YURICK: I apologize.

13 Q. It says "Is the SSR a term, condition, or
14 charge?" Do you see that?

15 A. Yes.

16 Q. And you say, "Yes, it is a charge."
17 Correct?

18 A. Yes.

19 Q. And the service that you're charging
20 there for, in essence, is stability, isn't it?

21 A. Yes. It's stability.

22 Q. So you would agree with me, then, that
23 regardless of the amount of the charge paid by a
24 particular customer, that wouldn't entitle them to
25 any more or less energy, correct?

1 A. The company's position is that the SSR is
2 a financial integrity charge that is necessary in
3 order to provide stable reliable service.

4 Q. My question is, and I'll state it again
5 because of the mumbling and everything: A customer,
6 regardless of the amount of the stability charge that
7 they pay, they're not entitled to any more or less
8 energy depending on the amount of that charge,
9 correct?

10 A. That's correct.

11 MR. YURICK: I don't have any further
12 questions at this point. Thank you.

13 EXAMINER PRICE: Thank you.

14 Staff?

15 MR. MARGARD: Just a few, your Honor.
16 Thank you.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Margard:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Let me ask you first about the circuit
23 breaker provisions that you refer to on page 6 of
24 your testimony.

25 The question asked on line 14 is "Has the

1 Commission ever allowed a bypassable charge to become
2 a nonbypassable charge?"

3 In your opinion, did either of the cases
4 that you referred to in this answer permit a
5 nonbypassable -- a bypassable charge to become a
6 nonbypassable charge?

7 A. Yes, I believe in both of those cases
8 there were bypassable charges that become
9 nonbypassable under certain circumstances.

10 Q. And under what circumstances can they
11 become nonbypassable?

12 A. When they reach a certain threshold,
13 percentage threshold.

14 Q. Is that automatic or is there any
15 additional filing required with the Commission?

16 A. I would presume that there's an
17 additional filing required by the Commission.

18 Q. So at least to date to the best of your
19 knowledge there are no bypassable charges that have
20 become nonbypassable. There is yet something which
21 must occur in order for that to be true.

22 A. Yes, that's what I understand.

23 Q. Okay. I want to ask you a couple
24 questions about storm damage recovery, and I guess
25 initially I just want to be clear that you can't tell

1 me, can you, currently what amount of storm damage
2 expense recovery is included in the company's current
3 rates? Can you?

4 A. The company's last base rate case was in
5 1991 and it's not clear from the records in that case
6 how much of that amount was related to storm damage
7 recovery.

8 Q. And, indeed, the Commission made that
9 specific finding in your 2012 AAM case relating to
10 storm damage recovery, correct?

11 A. In the 2012, which case, I'm sorry?

12 Q. The 12-2281-EL-AAM, derecho cost recovery
13 case.

14 A. I believe that's right.

15 Q. And it's true, I -- and I believe you
16 indicated, did you not, that the Commission ordered
17 that the deferrals be reduced by the average of the
18 three prior years' storm damage expense, correct?

19 A. The order in the deferral case required
20 that we reduce the deferral amount of a single storm
21 by an average of the last three years.

22 Q. And in the process of doing that no
23 outlying expenses were excluded from that averaging,
24 were they?

25 A. I'd have to go back and look at the

1 calculations. I don't know off the top of my head.

2 Q. But you're not aware.

3 A. No.

4 Q. And, in fact, I think you indicated in
5 response to Ms. Yost that you weren't certain which
6 years but it seemed reasonable that it would be 2009,
7 2010, and 2011?

8 A. Right.

9 Q. And there was no normalization done as
10 part of that process that you're aware of?

11 A. No, but there should have been. Normally
12 things before the Commission, all items are looked at
13 over a period of time and any outliers are removed or
14 rejected.

15 MR. MARGARD: Well, your Honor, I'll ask
16 that that portion after the word "no" be stricken as
17 nonresponsive.

18 EXAMINER PRICE: Overruled.

19 Q. I'm a little hesitant to wander into the
20 REC area, it's not an area that I'm very familiar
21 with, but you did testify that SRECs associated with
22 Yankee output are something that the company would
23 likely retain; is that correct?

24 A. Yes.

25 Q. Would the company intend to allocate or

1 apportion any part of those SRECs to any dedicated
2 customer or use in Ohio?

3 A. I'm not sure I understand the question.

4 Q. Of the RECs associated with the Yankee
5 output, are you aware whether the company would
6 intend to retain all of those SRECs or would they
7 intend to allocate a portion of those to others
8 paying the AER-N rate?

9 A. I think that the Ohio Revised Code
10 requires that, in 4928.143(B)(2)(c), that the
11 electric distribution utility shall dedicate to Ohio
12 consumers the capacity and energy and rate associated
13 with the cost of the facility. And so it would be
14 our proposal in our filing where we're seeking to
15 recover that cost we would address that issue.

16 Q. Thank you.

17 Finally, the company does not currently
18 have a distribution investment rider, or DIR, in
19 place, does it?

20 A. No, it does not.

21 Q. And you're not requesting one in this
22 proceeding; is that correct?

23 A. That's correct.

24 Q. And in your opinion and experience,
25 without offering a legal opinion, is it your

1 understanding that the company could have requested
2 such a rider in this case?

3 A. I don't believe the company could have
4 requested a rider because we had frozen distribution
5 rates through 2012, when we filed this case it was
6 still 2012.

7 Q. So are you suggesting to me that for that
8 reason the company did not consider requesting a
9 distribution investment rider as part of this case?

10 A. That's the reason the company did not
11 think about it, yes.

12 MR. MARGARD: That's all I have. Thank
13 you, your Honor.

14 EXAMINER PRICE: Redirect?

15 MR. FARUKI: Your Honor, I could use a
16 restroom break and a couple of minutes with the
17 witness.

18 EXAMINER PRICE: Let's take a ten-minute
19 recess.

20 (Recess taken.)

21 EXAMINER PRICE: Let's go back on the
22 record.

23 Redirect?

24 MR. FARUKI: Thank you, your Honor.

25 - - -

1 REDIRECT EXAMINATION

2 By Mr. Faruki:

3 Q. Ms. Seger-Lawson, one question or answer
4 I wanted to clarify, this was with regard to one of
5 Mr. Alexander's questions I believe where you were
6 being asked about the cost that DP&L incurs to send a
7 bill with a CRES provider, do you remember that?

8 A. Yes.

9 Q. Can you restate, just for clarity, what
10 that cost is?

11 A. The cost to the company of issuing a
12 consolidated bill, the incremental cost is 70 cents,
13 and if we were to split that with a CRES provider,
14 that cost would be 35 cents to the CRES provider.

15 MR. FARUKI: Thank you, your Honor.
16 That's all I have.

17 EXAMINER PRICE: Thank you.

18 MR. FARUKI: I renew the offer also of
19 DP&L Exhibit 12.

20 EXAMINER PRICE: We'll take that up after
21 recross.

22 Ms. Petrucci? Or Mr. Petricoff?

23 MR. PETRICOFF: No questions, your Honor.

24 EXAMINER PRICE: Ms. Yost?

25 MS. YOST: No questions, your Honor.

1 EXAMINER PRICE: Ms. Bojko?

2 MS. BOJKO: No questions.

3 EXAMINER PRICE: Mr. Williams?

4 MR. WILLIAMS: No questions, your Honor.

5 EXAMINER PRICE: Mr. Alexander?

6 MR. ALEXANDER: No questions, your Honor.

7 EXAMINER PRICE: Mr. Darr?

8 MR. DARR: No questions. Thank you.

9 EXAMINER PRICE: Mr. Yurick?

10 MR. YURICK: Nothing, your Honor. Thank
11 you.

12 EXAMINER PRICE: Mr. Margard?

13 MR. MARGARD: No, thank you, your Honor.

14 EXAMINER PRICE: You're excused. Thank
15 you.

16 MR. FARUKI: DP&L 12, your Honor.

17 EXAMINER PRICE: Any objections to the
18 admission of Dayton Power & Light Exhibit 12?

19 (No response.)

20 EXAMINER PRICE: Seeing none, it will be
21 admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 EXAMINER PRICE: Mr. Alexander.

24 MR. ALEXANDER: Your Honor, I move for
25 the admission of FES Exhibits 15 and 16.

1 EXAMINER PRICE: Any objections to the
2 admission of FES Exhibit 15 and 16?

3 MR. FARUKI: Let me try to remember what
4 they are and then I'll tell you.

5 EXAMINER PRICE: They are tariff sheets
6 from FirstEnergy and Duke.

7 MR. FARUKI: Then no, your Honor, no
8 objections.

9 EXAMINER PRICE: Okay.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 EXAMINER PRICE: Mr. Darr.

12 MR. DARR: Move admission of IEU 29, 30,
13 and 32 and request administrative notice of 31.

14 MR. FARUKI: No objection.

15 EXAMINER PRICE: Actually I think we will
16 simply take administrative notice of all three, 29,
17 30, and 31, because they all are documents otherwise
18 filed in the Commission dockets.

19 MR. DARR: And 32, your Honor?

20 EXAMINER PRICE: Did you ask for that one
21 too?

22 MR. DARR: Yes.

23 EXAMINER PRICE: I'm sorry.

24 MR. FARUKI: Which one was that?

25 EXAMINER PRICE: 32. We'll go ahead and

1 take administrative notice of that one also. It's
2 their comments 12-3151.

3 Ms. Yost

4 MS. YOST: Yes. At this time I'd like to
5 move OCC Exhibits 25 and 26 into evidence.

6 MR. FARUKI: I have 26. What was 25?

7 MS. YOST: The testimony of Beth Hixon in
8 the Duke case.

9 EXAMINER PRICE: Let's go off the record.

10 (Discussion off the record.)

11 EXAMINER PRICE: Let's go back on the
12 record.

13 At this time on my own motion the Bench
14 is going to mark Attachment BEH-3, which is a part of
15 OCC 25, as OCC 27. If on our next break you can give
16 the reporters a copy of that, and all the parties
17 have agreed to the admission of OCC 27 as well as
18 OCC 26. So those two items will be admitted.

19 MS. YOST: Thank you, your Honor.

20 (EXHIBITS ADMITTED INTO EVIDENCE.)

21 EXAMINER PRICE: Mr. Darr.

22 MR. DARR: Thank you, your Honor. As I
23 indicated off the record, I'm requesting that, and
24 the Bench agreed to take administrative notice of,
25 the stipulation and recommendation in Case

1 No. 12-1230. I request to have that marked as IEU
2 Exhibit 33.

3 EXAMINER PRICE: It will be so marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 EXAMINER PRICE: Any objections to taking
6 administrative notice of the stip in 12-1230?

7 MR. FARUKI: No, your Honor.

8 EXAMINER PRICE: Seeing none, we'll take
9 administrative notice of that.

10 Mr. Darr, make sure you give a copy to
11 the reporter. Great.

12 EXAMINER MCKENNEY: FES, are you ready to
13 call your next witness?

14 MR. LANG: Yes, your Honor. FES calls
15 Sharon Noewer.

16 MS. YOST: Your Honor, not to interrupt,
17 but if there is time, I can make this later, but I
18 have a motion to compel at this time and I think it's
19 better to be addressed sooner rather than later, if I
20 succeed, for scheduling purposes. If I do not
21 succeed --

22 EXAMINER PRICE: Before we take this
23 witness, you can stay here or go back, it's up to
24 you.

25 MS. YOST: I'm sorry, Sharon.

1 EXAMINER PRICE: Go ahead.

2 MS. YOST: Thank you, your Honors.

3 Today the company filed the rebuttal and
4 supplemental testimony of Mr. -- or, excuse me, of
5 R. Jeffrey Malinak. Does the Bench have a copy?

6 EXAMINER PRICE: No, I don't have a copy
7 of Malinak.

8 MS. YOST: May I approach, your Honor?

9 EXAMINER PRICE: You may.

10 MS. YOST: And, your Honor, specifically
11 at this time OCC moves to compel the company to have
12 Mr. Malinak available for a deposition in regard to
13 the supplemental testimony that was filed today,
14 specifically section 3 only.

15 Your Honors, yesterday OCC provided a
16 copy of our 30th set of our interrogatories and
17 requests to produce that were propounded upon the
18 company. Specifically interrogatory No. 493 asks
19 that the company, pursuant to Ohio Administrative
20 Code 4901-1-16-C, to identify each expert witness
21 that DP&L expects to testify at the hearing on its
22 behalf and state the subject matter on which each
23 expert is expected to testify, and provide a brief
24 summary of such expert's expected testimony.

25 The response was: "Subject to all

1 general objections, DP&L states that witness -- that
2 William Chambers, Robert Lee, Jeffrey Malinak will
3 testify as its experts at the pending hearing. For a
4 description of the subject matter and summary of
5 their testimony, DP&L directs OCC to the prefiled
6 testimony of Mr. Chambers, Mr. Lee, and Mr. Malinak.
7 Mr. Chambers or Mr. Malinak may file rebuttal
8 testimony relating to their initial prefiled
9 testimony but DP&L has not yet determined whether
10 such rebuttal testimony will be filed."

11 Your Honor, if -- you have before you the
12 second revised testimony of Mr. Malinak. If you
13 could turn to the first page of it, which in essence
14 is the table of contents, if you see there, there is
15 five sections, 1 is the introduction, 2 is the
16 overview of the more favorable in the aggregate
17 statutory test, section 3 is the aggregate price test
18 for DP&L's ESP, section 4 is other nonquantifiable
19 characteristics of the proposed ESP and MRO, section
20 5 is conclusion.

21 Your Honors, what the company did was not
22 only file rebuttal testimony today but also
23 supplemental testimony as indicated throughout
24 Mr. Malinak's testimony.

25 Section 3 is financial integrity.

1 Financial -- I actually don't have the copy in front
2 of me, financial -- your Honors, could you tell me
3 what section 3 is?

4 EXAMINER PRICE: Financial integrity and
5 financial condition of DP&L.

6 MS. YOST: Thank you. And that has
7 subsection A is DPLER margins transfer price, B,
8 purpose of SSR, C, ROE and financial integrity.

9 Your Honors, as you can see, with the
10 supplemental testimony they have taken Mr. Malinak's
11 testimony beyond anything in his direct testimony.
12 These areas that they are now testifying on have been
13 handled by other OCC counsel when, in fact, I was
14 responsible for the cross-examination and deposition
15 of Mr. Malinak on the -- in essence, his testimony
16 which is the more favorable in the aggregate
17 statutory test, the MRO versus ESP test.

18 So, your Honor, in all fairness, since
19 they've introduced these new areas with this witness
20 which is not consistent with their interrogatory that
21 they identify these subject matters, and pursuant to
22 OCC's notice to take depositions of all witnesses
23 filing testimony in this proceeding, it's only fair
24 that OCC be allowed to depose Mr. Malinak on these
25 new areas, the supplemental areas as indicated on

1 section 3 of the testimony filed today.

2 EXAMINER PRICE: Mr. Sharkey.

3 MR. SHARKEY: Yes, your Honor.

4 Mr. Malinak's section 3 is all rebuttal testimony.

5 He's responding to various issues that have been
6 raised by various witnesses at various points in time
7 in this case, we, thus, believe that it's appropriate
8 rebuttal testimony.

9 Some of the topics were in other
10 witnesses's areas but to streamline the process and
11 make it easier we believe it would be easier to have
12 Mr. Malinak address these issues, but consistent with
13 past practices we think it's unnecessary and
14 inappropriate to have Mr. Malinak deposed on rebuttal
15 testimony, your Honor.

16 As you know and have granted with
17 Ms. Seger-Lawson already, the intervenors had ample
18 time and ability to examine her thoroughly here at
19 the hearing, and they could certainly examine
20 Mr. Malinak thoroughly regarding the scope and any
21 subject in his rebuttal testimony Tuesday when we
22 intend to bring him to the stand.

23 EXAMINER PRICE: Let's go off the record.

24 (Discussion off the record.)

25 EXAMINER PRICE: Let's go back on the

1 record.

2 At this time we are going to defer ruling
3 on the motion to compel, as the parties have agreed
4 that they would see if they can work out something
5 without the necessity of the Bench getting involved
6 in this.

7 EXAMINER MCKENNEY: Ms. Noewer, would you
8 please raise your right hand.

9 (Witness sworn.)

10 EXAMINER MCKENNEY: Thank you. Please
11 state your name and business address for the record.

12 THE WITNESS: My name is Sharon Noewer,
13 my business address is 2341 White Pond Drive, Akron,
14 Ohio.

15 MR. LANG: Your Honors, at this time we'd
16 like to have Ms. Noewer's, see if I can get it right
17 this time, her public testimony marked as Exhibit 17
18 and her confidential version of her testimony marked
19 as Exhibit 17A.

20 EXAMINER MCKENNEY: They will be so
21 marked.

22 (EXHIBITS MARKED FOR IDENTIFICATION.)

23 - - -
24
25

1 SHARON L. NOEWER

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Lang:

6 Q. And, Ms. Noewer, can you identify your
7 public version of your testimony as Exhibit 17 and,
8 likewise, the confidential version as Exhibit 17A
9 that's been marked?

10 A. Yes.

11 Q. Do you have any corrections to make to
12 your testimony?

13 A. Yes, I do. Page 5, line 23, strike "and
14 Duke Energy Ohio methodologies" and replace with the
15 word "methodology," so that the bullet point now
16 reads: "The Competitive Bid Rate methodology should
17 be modified consistent with the FirstEnergy Ohio
18 methodology."

19 Page 19, lines 12 and 13, strike "and
20 Duke Energy Ohio," so that the sentence now reads:
21 "DP&L should use a similar methodology to the
22 FirstEnergy Ohio utilities, in which the wholesale
23 auction price is broken into energy and capacity
24 components and are both charged on a cent per
25 kilowatt-hour basis."

1 And then one final change is on Exhibit
2 SLN-3, and footnote 4 is missing. The footnote 4
3 should read: "In AEP Ohio, the first switch is
4 free."

5 Q. Is that all of your corrections?

6 A. Yes.

7 Q. If I were to ask you the same questions
8 in your direct testimony with those corrections,
9 would your answers be the same?

10 A. Yes.

11 MR. LANG: Your Honors, the witness is
12 available.

13 EXAMINER MCKENNEY: Thank you.

14 Ms. Noewer, I'm going to ask you if you
15 feel that any of your answers are going to delve into
16 confidential materials, please notify us before you
17 answer and we'll move to the confidential portion of
18 our transcript, all right.

19 THE WITNESS: Yes, your Honor.

20 EXAMINER MCKENNEY: Thank you.

21 At this time we'll move to
22 cross-examination.

23 Mr. Petricoff?

24 MR. PETRICOFF: No questions, your Honor.

25 EXAMINER MCKENNEY: Ms. Yost?

1 MS. YOST: No questions, your Honor.

2 EXAMINER MCKENNEY: Ms. Bojko?

3 MS. BOJKO: No questions, your Honor.

4 EXAMINER MCKENNEY: Mr. Williams?

5 MR. WILLIAMS: No questions, your Honor.

6 EXAMINER MCKENNEY: Mr. Darr?

7 MR. DARR: No questions, thank you.

8 EXAMINER MCKENNEY: Mr. Yurick?

9 MR. YURICK: No questions, your Honor.

10 Thank you.

11 EXAMINER MCKENNEY: Mr. Sharkey?

12 MR. SHARKEY: Yes, thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Sharkey:

16 Q. Ms. Noewer, as you know, my name is Jeff
17 Sharkey and I represent the Dayton Power & Light
18 Company in this matter.

19 A. Good afternoon.

20 Q. Good afternoon.

21 As an initial matter, FES is a CRES
22 provider, correct?

23 A. Yes.

24 Q. And it provides service in The Dayton
25 Power & Light service territory?

1 A. Yes, it does.

2 Q. And FES has bid in competitive auctions
3 in Ohio, right?

4 A. FES has bid in wholesale competitive
5 procurement auctions in Ohio, yes.

6 Q. Okay. FES is not a customer of The
7 Dayton Power & Light Company, correct?

8 A. Correct.

9 Q. Okay. If you would turn to page 6 of
10 your testimony, please. Section 3 that starts on
11 page 6 of your testimony addresses the subject of
12 whether DP&L's ESP provides qualitative benefits,
13 correct?

14 A. Yes, that's correct.

15 Q. You understand that DP&L Witness Malinak
16 offers the opinion that a nonquantifiable benefit of
17 DP&L's ESP is that the ESP moves to 100 percent
18 competitive bidding more rapidly than under an MRO?

19 A. I understand that that's his position and
20 I don't agree with that.

21 Q. In fact, starting on line 22 you sponsor
22 an opinion that DP&L's ESP does not possess that
23 nonquantifiable benefit because the relevant
24 comparison should be to DP&L's ESP on the one hand
25 and an MRO with immediate 100 percent competitive

1 bidding on the other hand, correct?

2 A. Yes. I believe that DP&L already filed
3 the first MRO and that the blending percentages in
4 the statute refer to a first-time applicant and, in
5 this case, DP&L is not.

6 Q. So it's your view that if DP&L -- strike
7 that.

8 So it's your view that now that DP&L has
9 filed an MRO application and withdrawn that
10 application, any subsequent MRO application by DP&L
11 would not be subject to the statutory blending
12 percentages.

13 A. You read that kind of quickly. Could you
14 repeat that, please?

15 Q. Sure. It's your view that now that DP&L
16 has filed an MRO application and withdrawn that
17 application, that any subsequent MRO application by
18 DP&L would not be subject to the statutory blending
19 rates in the MRO statute, right?

20 A. My position is that because they filed
21 their first application, that this next application
22 would not be subject to those blending statutes.

23 Q. So it's your view that if a utility files
24 an MRO, then withdraws it hours later and files
25 another MRO, it's your understanding that the second

1 MRO would not be subject to the MRO blending
2 percentages, right?

3 A. Yes, that could be true. My view,
4 though, is that that seems awfully -- an awfully
5 hypothetical situation, that's a tough one to
6 analyze. In my view the Commission would look at
7 that and per its mission make sure that it enforces
8 in compliance with defective utility practices, so I
9 think they would take a look at that very seriously.

10 EXAMINER PRICE: Where would we draw the
11 line; if it's not a few hours, is it a few weeks? A
12 few months?

13 THE WITNESS: I think that would be
14 something that the Commission would really strongly
15 take a look at.

16 EXAMINER PRICE: In the case of Duke
17 Energy Ohio, the Commission found that the MRO
18 application was incomplete and inadequate. If they
19 filed an MRO, would that be a second MRO application
20 or are they still on their first application?

21 THE WITNESS: I think that's up for the
22 Commission to decide. I don't know that I have an
23 opinion on that. I would think that if it was
24 inadequate, that it would need to be supplemented.

25 EXAMINER PRICE: So then their next

1 application would be their first application.

2 THE WITNESS: No, I would think that they
3 would ask them to supplement that one so that it was
4 fulfilled and that would be their first one.

5 EXAMINER PRICE: Ask them to refile back
6 in the old docket?

7 THE WITNESS: Well, for now though I
8 think that that is kind of a foregone conclusion
9 because of the ESP that they have now.

10 EXAMINER PRICE: Okay. Fair enough.

11 MR. SHARKEY: Your Honor, before you
12 asked Ms. Noewer a question, I was going to ask her
13 to refer to her deposition because I believe her
14 answer to my last question was --

15 EXAMINER PRICE: I'm sorry.

16 MR. SHARKEY: -- inconsistent.

17 That's fine. I think it might be useful
18 to the Bench if my last question and Ms. Noewer's
19 last answer was read so I can then refer her to her
20 deposition if, you would.

21 EXAMINER PRICE: That would be fine, if
22 you could reread Mr. Sharkey's last question and
23 answer before my tangent.

24 MR. HAYDEN: Your Honor, I'm sorry, I'm
25 having a really hard time hearing everybody up front.

1 EXAMINER PRICE: Even me?

2 MR. HAYDEN: Even you.

3 EXAMINER PRICE: Okay, we will all
4 attempt to project better.

5 (Make that defective in what I read
6 back.)

7 Q. (By Mr. Sharkey) Do you have a copy of
8 your deposition available to you, Ms. Noewer?

9 A. Yes.

10 Q. Thank you. Would you turn, please, to
11 page 16, line 3, "So the utility at 10:00 a.m. files
12 an application then two hours later withdraws" --

13 A. Excuse me, I'm not in the right place,
14 hold on a second, I was referring to the pages.

15 Q. Page 16, line 3. Are you there?

16 A. Yes.

17 Q. Okay. Question was, starting on line 3:
18 "So the utility at 10:00 a.m. files an MRO
19 application and then two hours later withdraws that
20 MRO application and files a second one. Are you
21 saying that the utility's second filed MRO
22 application, as you understand it, would be free from
23 the statutory requirements regarding percentages as
24 to competitive bidding?"

25 Answer: "Yes."

1 Did I read that accurately?

2 MR. LANG: And, your Honor, I move to
3 strike that as impeachment. Her answer was actually
4 "yes" and then she went on to explain why it would be
5 in the Commission's discretion, and if you actually
6 see in her deposition she said "yes" on line 10, and
7 then on lines 15 through 25 goes on to provide
8 exactly the same answer that she gave here this
9 morning. It's not impeachment -- I'm sorry, this
10 afternoon. It's not impeachment.

11 EXAMINER PRICE: Your objection is
12 overruled. The transcript says what it says and the
13 Commission is perfectly capable of deciding whether
14 or not this is impeachment.

15 Q. (By Mr. Sharkey) Ms. Noewer, if you could
16 pull out the binder before you and turn --

17 A. Excuse me, this binder?

18 Q. Yes.

19 A. Oh.

20 Q. It's a binder of DP&L's exhibits. Turn,
21 if you would, to DP&L Exhibit 108.

22 MR. LANG: Do you have a copy for
23 counsel?

24 MR. SHARKEY: I do.

25 MR. FARUKI: You were earlier provided

1 one.

2 MR. SHARKEY: In fact, we provided copies
3 of these before.

4 MR. FARUKI: We've used them several
5 times with witnesses, you have a binder of DP&L's
6 premarked exhibits.

7 EXAMINER PRICE: Mr. Alexander is
8 collecting them at home.

9 MR. ALEXANDER: To whom? Who did you
10 give the binder to?

11 EXAMINER PRICE: I thought all of counsel
12 got them.

13 MR. FARUKI: We did. We distributed them
14 during my examination, my cross of Mr. Murray.

15 MR. HAYDEN: I believe I have it and I'm
16 happy to give it back, if that makes everybody feel
17 better.

18 EXAMINER PRICE: We just wanted to
19 identify its location.

20 Next time have them sign for it,
21 Mr. Sharkey.

22 MR. SHARKEY: We've got three more boxes,
23 at least, full of binders they can have too.

24 Q. (By Mr. Sharkey) Turn, if you would, to
25 Exhibit 108, second page, subsection (D) begins with

1 the phrase you referred to I believe the first
2 application filed under this section. Do you see
3 that?

4 A. Yes.

5 Q. Can you point me to any specific language
6 in that section that authorizes or suggests that the
7 Commission should engage in some sort of test to
8 determine whether the first filed MRO application was
9 filed in good faith or was complete or was otherwise
10 a realistic and genuine MRO application?

11 A. I don't see anything here specifically
12 that relates to that. My view is that it's the
13 Commission's mission to implement the statute to the
14 best of its ability and on the plain reading of the
15 language, and that's my reading of the language.

16 And, in addition, my experience at the
17 time when Senate Bill 221 was enacted was that there
18 was a discussion about, as we were going through all
19 the proceedings at the General Assembly, that the
20 concern was companies at that time actually filing
21 their first MRO application with market prices so
22 high that they would need to do some gradually
23 blending down of those.

24 So it made perfect sense to me that at
25 that time and in this statute it says the first

1 application. Power prices are low now and I think
2 upon second applications it's not applicable.

3 Q. So whether or not the first application
4 is binding upon the utility and controls depends upon
5 what power prices were at the time the first and
6 second applications are filed?

7 A. No. I was describing to you my opinion
8 why I thought it made sense.

9 Q. Well, right. You described to me that at
10 the time power prices were high and, thus, the first
11 application would require a blending of generation
12 rates, right?

13 A. I explained to you my recollection of why
14 at the time I believed the statute was written this
15 way.

16 Q. So if power prices were to change between
17 now and the time DP&L were to file its -- were to
18 file a second MRO application, you would agree with
19 me that these statutory percentages under your
20 interpretation would no longer protect consumers from
21 high power prices.

22 A. I couldn't disagree more. I believe that
23 the statute is -- entitled 4928 is retail competitive
24 electric service. The default provision there is a
25 market rate offer. That's why when you go to a

1 market rate offer you can't go back to an ESP.

2 So, no, my belief is that in the future,
3 once you do an MRO, you're subject to market and that
4 continues on. So, no, I don't agree with you.

5 Q. So if market prices were higher than The
6 Dayton Power & Light's prices, there would be no
7 gradual step-up to those market prices under your
8 interpretation, that's my question.

9 A. Well, they aren't higher. So I'm not
10 sure what you're asking me.

11 Q. I think it's pretty simple.

12 A. Okay.

13 Q. I want you to assume that at the time The
14 Dayton Power & Light Company files a subsequent MRO
15 application, market prices are substantially higher
16 than DP&L's then-existing SSO rates. Under your
17 interpretation their customers would immediately be
18 charged those substantially higher market rates and
19 there would not be a gradual step-up from DP&L's
20 then-existing SSO rates over time, right?

21 MR. LANG: I'd object just to lack of
22 foundation for the hypothetical, your Honor.

23 EXAMINER MCKENNEY: Objection's
24 overruled.

25 A. So if DP&L files its second application

1 and hasn't filed its first yet, in this proceeding,
2 this proceeding is an ESP.

3 Q. I thought you told me earlier that DP&L's
4 already filed its first application.

5 A. I thought you were referring to this
6 application. I'm confused, can you ask me the
7 question again?

8 Q. Sure, you told me that DP&L's already
9 filed an MRO application in this case.

10 A. Yes. Yes, it has.

11 Q. And so that if DP&L files a second
12 application, these MRO blending percentages would be
13 inapplicable in your understanding, right?

14 A. Correct.

15 Q. So, if three years from now, five years
16 from now, whatever period of time the ESP application
17 expires, market rates have changed and market rates
18 are then well in excess of DP&L's ESP rates, it would
19 be your understanding that the results of the MRO 100
20 hundred percent competitive bidding would immediately
21 be put in place so that there would be a substantial
22 increase to market rates at a hundred percent in year
23 one under an MRO.

24 A. Yes, I believe that the statute is that
25 the policy for the state of Ohio was to go to

1 complete market rates. So, yes.

2 Q. You understand that the General Assembly
3 put the blending percentages into the statute, right?

4 A. Yes.

5 Q. You're not aware of any benefits that the
6 blending percentages provide, are you?

7 A. Not in this case, no.

8 Q. Are you aware of any benefits that they
9 present in any other cases?

10 A. I mentioned to you the case back in 2008,
11 AEP Ohio at the time, had they put in an MRO
12 gradualism at that point, I think that would have
13 been a benefit at that point but, no, not in this
14 case.

15 Q. So there are instances in which the
16 blending percentages that could provide benefits but
17 in your view not in this case?

18 A. I gave you the one example I could think
19 of that applied to that. Not in this case.

20 Q. You agree with me, don't you, that if the
21 Commission rejects your first filed interpretation of
22 the MRO statute, then DP&L's ESP provides for a more
23 rapid transition to 100 percent competitive bidding
24 than the MRO statute?

25 A. If you're comparing numbers, meaning

1 percentages in this ESP compared to the blending
2 percentages in the MRO for a first time applicant,
3 yes.

4 Q. Turn, if you would, to page 7 of your
5 prefiled testimony. Starting on line 4 you refer to
6 certain competitive enhancements that are proposed by
7 The Dayton Power & Light Company, right?

8 A. Yes.

9 Q. And you state starting on line 6 that,
10 "Of course, DP&L is seeking to charge customers for
11 these enhancements and so they cannot be deemed a
12 benefit of the ESP." Correct?

13 A. That's what that says, yes.

14 Q. Okay. It's true, isn't it, that you're
15 not aware of any Commission rule that DP&L has
16 violated by not implementing those enhancements
17 earlier?

18 A. No.

19 Q. You're agreeing with me?

20 A. I got lost in the tense.

21 Q. Okay. Do you agree that you are not
22 aware of any Commission rule that DP&L has violated
23 by not implementing those enhancements earlier?

24 A. Correct.

25 Q. Okay. And you're also not aware of any

1 Commission order that DP&L's violated by not
2 implementing those enhancements earlier, correct?

3 A. Correct.

4 Q. And you agree that it will make it easier
5 for FES to do business in DP&L service territory if
6 DP&L implements those enhancements, right?

7 A. I think that some of them that at least
8 Witness Seger-Lawson identified will make it easier
9 for suppliers to do business. I think some of the
10 other ones, though, are more related to ensuring that
11 customers are satisfied with the service that they
12 receive or to reduce confusion for the customers.

13 Q. Turn, if you would, then -- actually, I'm
14 sorry, at the bottom of page 7, the section 4, you
15 discuss the state policy in favor of competition,
16 correct?

17 A. I do believe that section 4 relates to
18 4928, the state policy for retail electric service at
19 a high level, yes.

20 Q. You have read Phil Herrington's testimony
21 in this case, right?

22 A. Yes.

23 Q. And you're aware that his testimony
24 offers the opinion that DP&L's ESP furthers a number
25 of the policies of the state of Ohio?

1 A. Yes.

2 Q. Okay. It's true, isn't it, that other
3 than favoring competition you can't identify any
4 specific policies that your testimony addresses?

5 A. Well, first, I'm a little confused when
6 you say "other than competition." The entire statute
7 is about competition. But trying to be responsive to
8 your question, I did not copy and paste, as he did,
9 specific policy references from 4928, but I do
10 believe that my testimony does refer to specific
11 policies as his does.

12 So, for example, I'm not disagreeing with
13 Mr. Herrington on his discussion of policies that
14 there's a need for a market-based CBP. What I differ
15 from him on in the policy discussion is that I
16 believe it ought to be a hundred percent today to
17 bring those benefits to customers and he believes
18 that it should be slower, the transition to market,
19 and that there are subsidies involved.

20 Q. Is that your only disagreement as you sit
21 here that you recall you had with Mr. Herrington's
22 discussion of policies?

23 A. That's what I can recall at the moment.
24 I know that he also had some specifics from 4928.02
25 that he referred to.

1 Q. Let me be more specific because I'm
2 really interested in the opinions not so much that
3 you have but that you sponsor in your prefiled
4 testimony.

5 Is there anything else in your prefiled
6 testimony where you have specifically addressed
7 policies of the State of Ohio except for the policy
8 in favor of competition?

9 A. I already described to you that I think
10 that the entire statute is about the transition to a
11 competitive market, so the entire statute's about
12 competition.

13 But, again, trying to be responsive, if
14 you're referring to something more specific than
15 that, I know Mr. Herrington refers to some of the
16 items in 4928.02, so if I were to just choose an
17 example here, one of the things that I refer to is,
18 if you look at item 4928.02, about facilitating the
19 state's effectiveness in the global economy, I refer
20 to that on page 8, lines 1 through 11, specifically
21 in my conclusion on lines 10 and 11: "As a result,
22 competition promotes a favorable environment for the
23 overall development of Ohio's economy."

24 So that's one example of a very specific
25 portion of the statute.

1 Q. Okay. Anything else? Do you have before
2 you that you're looking at a copy of Ohio Revised
3 Code 4928.02?

4 A. I brought it with me, yes.

5 Q. Okay. Anything else in your testimony
6 that you believe addresses the specific policy of the
7 state of Ohio?

8 A. I also reference on 4928.02(H) avoiding
9 anticompetitive subsidies. I reference that in my
10 testimony in several places, but just as an example
11 page 4, lines 1 through 4 relate to the subsidies and
12 cross-subsidies for generation assets through the
13 nonbypassable service stability rider and switching
14 tracker. And then other parts of my testimony also
15 point to that.

16 Q. Does your testimony address any other
17 policies that are identified in that subsection? Can
18 you cite me to specific cases.

19 A. Item (J), so 4928.02(J), I also refer in
20 my testimony at a fundamental level on page 17 to the
21 AER rider and that it's improper because generation
22 service is competitive.

23 Q. Anything else?

24 EXAMINER PRICE: Can I ask you about
25 that.

1 THE WITNESS: Sure.

2 EXAMINER PRICE: So you believe that any
3 nonbypassable cost recovery for generating facility
4 is improper and against the state policy.

5 THE WITNESS: That's absolutely right.
6 As a CRES supplier what's important for us is that we
7 can provide and compete in a competitive marketplace
8 for our generation. So anything that's subsidized or
9 that charges our customers twice, because they're not
10 taking advantage of that service, we consider to be
11 anticompetitive and improper.

12 EXAMINER PRICE: So the legislature erred
13 when they put in that section 4928.143(B)(2)(c)?

14 THE WITNESS: As a credit supplier I
15 believe that, yes.

16 EXAMINER PRICE: Okay. Thank you. Fair
17 enough.

18 Q. (By Mr. Sharkey) I'm sorry, were you done
19 with your list of policies that were contained in .02
20 that you believe are specifically addressed in your
21 prefiled testimony?

22 A. 4928.02(L) protect at-risk population, I
23 believe that my testimony addresses the support for
24 going to 100 percent competitive bid to give
25 customers an opportunity for savings and take

1 advantage of low market prices today.

2 Q. Anything else?

3 A. 4928.02(A) regarding reasonably priced
4 retail electric service and making sure that that's
5 available, I believe that us as a CRES supplier as
6 well in this state as well as our points about
7 hundred percent auction also refer to that particular
8 portion of that state policy statute.

9 Q. Okay. Anything else?

10 A. 4928.02(C) with respect to ensuring the
11 diversity of electric supplies and suppliers. In my
12 view, when I refer to the ICT cap in the CBP plan and
13 how that would limit participation potentially from
14 suppliers in the wholesale auctions, I believe that
15 that is designed to ensure that there's more
16 suppliers or that there's enough suppliers to make
17 sure that there's a robust auction.

18 Q. Anything else?

19 A. That's all I can identify as I sit here
20 now.

21 Q. It's true, isn't it, that in evaluating
22 DP&L's ESP you agree with me that the Commission
23 should consider the interest of DP&L, its customers,
24 other intervenors in the case, and third persons?

25 A. Yes.

1 Q. Okay. Turn to page 9 of your testimony,
2 if you would. Line 1 you state that "DP&L's proposed
3 ESP would hinder competition....," correct?

4 A. That's an incomplete sentence. I'd like
5 to finish it.

6 Q. My only reference is that you are
7 referring to hindering competition in that paragraph.
8 Is that true?

9 A. That's true.

10 Q. It's true, isn't it, that FES currently
11 serves customers in DP&L's service territory?

12 A. Yes.

13 Q. Do you know that over half of DP&L's load
14 has currently switched?

15 A. I understand that from the testimony
16 that's been given, yes.

17 Q. You understand that DP&L does not
18 currently have a competitive bidding process in its
19 service territory.

20 A. DP&L does not have a wholesale
21 competitive bidding process for its SS load in its
22 territory, yes.

23 Q. And you understand that it proposes to
24 sponsor one as part of its ESP, right?

25 A. Yes, I understand that there's a CBP plan

1 where they will be at different percentages for
2 different years allowing competitive procurements in
3 their territory which -- yes.

4 Q. While you may agree with the
5 percentage -- disagree with the percentages proposed
6 by DP&L, you do agree that implementing a competitive
7 bidding process is a good idea.

8 A. Yes.

9 Q. Okay. You understand that Dona
10 Seger-Lawson's testimony proposes to implement
11 various competitive enhancements, right?

12 A. Yes.

13 Q. And you've already told me that you agree
14 with those, haven't you?

15 A. Could you repeat that?

16 Q. You agree that implementing those items
17 is a good idea, right?

18 A. Yes, I do.

19 Q. Turn, if you would, to actually the
20 bottom half of that page, section 5 addresses
21 corporate separation issues, right?

22 A. Remind me what page you're on, please.

23 Q. Page 9, section 5.

24 A. Okay.

25 Q. You address corporate separation in that

1 section, right?

2 A. Yes.

3 Q. Okay. On line 15 you state "...FES has
4 no comments on the proposed Third Amended Corporate
5 Separation Plan itself...." Did I read that
6 accurately?

7 A. It's a partial sentence; you read the
8 first half of the sentence correctly.

9 Q. Okay. It's true, isn't it, that you're
10 not aware of any facts that suggest that DP&L is
11 violating its currently operative corporate
12 separation plan?

13 A. I'm hesitating because I'm not sure,
14 again, on the tense. I agree with you.

15 Q. Turn, if you would, to page 18, line 16
16 of your testimony. You have a sentence there that
17 says "First, the transfer price between DP&L and its
18 retail affiliate(s) should be set at wholesale market
19 prices."

20 Do you know if DP&L, in fact, currently
21 does set its transfer price between it and DPLER at
22 wholesale market prices?

23 A. From sitting here through these
24 proceedings as well as reading testimony and reading
25 discovery, no, it's not clear to me that that's what

1 DP&L sets its transfer prices at.

2 Q. Are you aware of any facts that suggest
3 that DP&L's not setting them at wholesale market
4 prices?

5 A. The facts that have been presented in the
6 case through testimony.

7 Q. Which specific facts leads you to doubt
8 DP&L's setting its transfer price between it and
9 DPLER at a wholesale market price?

10 A. I've read in discovery responses as well
11 as testimony different terms used, for example, "near
12 market," "at market," "based on market," and then
13 also listening to Mr. Hoekstra's testimony about how
14 they price and provide power to DPLER it's often in
15 contracts that, obviously, I'm not privy to but, you
16 know, there -- it's confusing to me so, no, it's not
17 clear.

18 Q. I'm not asking you to agree that the
19 transfer price is at market. What I'm asking you is
20 are you aware of any mathematical computation that's
21 compared transfer prices used by DP&L to DPLER that
22 suggest that the price at the time was not the market
23 price?

24 A. I'm not aware of mathematical
25 computations. You, I believe, asked me what

1 testimony I was aware of. And the testimony I'm
2 aware of is what I heard. I -- you know, if there
3 were mathematical computations, perhaps those were in
4 the confidential portion that I was not in the room
5 for.

6 Q. Turn back, if you would, to page 9 of
7 your testimony. You sponsor an opinion there on line
8 19 that DP&L should transfer its generation assets
9 before December 31, 2017, correct?

10 MR. LANG: If I could just ask, when you
11 say "sponsor an opinion" you're asking if that's what
12 she's testifying to?

13 MR. SHARKEY: Yes.

14 MR. LANG: Just to make sure, you're
15 asking if it's her testimony, not, she's not
16 sponsoring testimony, it's her testimony, right? I'm
17 sorry to interrupt.

18 MR. SHARKEY: Yeah, I think that's clear
19 I'm asking her if she's sponsoring an opinion if
20 that's what she states in her testimony. Yes.

21 MR. LANG: Okay. Sorry.

22 A. Could you repeat that, please?

23 Q. (By Mr. Sharkey) Sure. Page 49 you're
24 sponsoring an opinion that DP&L should transfer its
25 generation assets before December 31, 2017.

1 A. Yes.

2 Q. It's true, isn't it, that you have not
3 reviewed DP&L's first mortgage bonds to determine
4 what restrictions, if any, they place upon DP&L's
5 ability to transfer its generation assets?

6 A. No, I have not reviewed them.

7 Q. It's also true that you have not
8 contacted bondholders to determine whether they would
9 consent to release any rights they have to prohibit
10 DP&L from transferring its generation assets.

11 A. No, I haven't, nor do I believe from the
12 testimony that I've heard that DP&L has.

13 Q. Do you know how many bondholders there
14 are?

15 A. No.

16 Q. It's also true, isn't it, that you've not
17 reviewed the bonds to determine whether they are
18 presently callable?

19 A. I have not reviewed the bonds. Again,
20 I've heard in testimony that some are callable and
21 some are not.

22 Q. It's also true that you have not done any
23 analysis to attempt to determine -- start that over.

24 You have not done any analysis to attempt
25 to determine whether DP&L could obtain new financing

1 to accomplish the generation of its assets before
2 December 31, 2017.

3 A. No.

4 Q. You're agreeing with me?

5 A. I agree.

6 Q. On line 22 --

7 A. Are we still on page 9?

8 Q. I am.

9 You state "Almost 14 years has passed
10 since SB 3 was enacted and EDUs were put on notice of
11 the requirement for corporate separation." Did I
12 read that accurately?

13 A. Yes.

14 Q. And "SB 3" is a reference to Senate
15 Bill 3 that was enacted in 1999, correct?

16 A. Correct.

17 Q. Do you understand that, in fact, SB 3
18 said that utilities may transfer their generation
19 assets at any time?

20 A. My recollection is that it said that
21 utilities had an interim period before they would --
22 could transfer their assets and were allowed that
23 with good cause.

24 Q. Turn, then, within the binder of DP&L's
25 exhibits to Exhibit No. 104.

1 A. I'm there.

2 Q. Okay. Page 2, Subsection (E).

3 A. Yes.

4 Q. There's an introductory clause that says
5 "Notwithstanding section," and it lists a variety of
6 sections of the Ohio Revised Code and then it goes on
7 to say "an electric utility may divest itself of any
8 generating asset at any time without Commission
9 approval," and it's subject to a number of other
10 items. But the portion that I read, I read that
11 accurately, didn't I?

12 A. You did, but to me that means that they
13 don't have to wait. What I'm referring to is section
14 (C) above where it says that they have to approve a
15 corporate separation plan and actually separate their
16 assets.

17 Q. Ms. Noewer, I'm asking you about
18 subsection (E).

19 A. Oh.

20 Q. Subsection (E) specifically uses the word
21 "may" right?

22 A. You did read that correctly.

23 Q. And subsection (E) does use the word
24 "may," doesn't it?

25 A. Yes, it does.

1 Q. Do you understand the word "may" to be
2 permissive and to have a different meaning than the
3 word "shall"?

4 A. I certainly do.

5 Q. Then at the bottom of page 9 of your
6 testimony you state that DP&L -- sorry, are you
7 there?

8 A. Yes, I am.

9 Q. Okay. You state "DP&L should be required
10 to pursue full structural separation as soon as
11 possible, to prevent further cross-subsidies between
12 utility and competitive affiliates...." Did I read
13 that accurately?

14 A. Yes, you did.

15 Q. I think I might have missed the word
16 "the."

17 You're aware that DP&L currently receives
18 a nonbypassable charge, right?

19 A. Yes.

20 Q. It's true, isn't it, that you're not
21 aware of any instance in which DPLER has bid at
22 auction at a rate that was below the expected market
23 rates?

24 A. Could you repeat that?

25 Q. Sure. You're not aware of any instance

1 in which DPLER has bid in a competitive auction at a
2 price that was below expected market rates.

3 A. No, I don't know what DPLER's auction
4 bids have been.

5 Q. You're not aware of any instance in which
6 DPLER has entered into a contract with a customer to
7 provide generation at a price below the then-expected
8 future generation prices, right?

9 A. Correct. I wouldn't expect to be privy
10 to DPLER's contracts; that would be competitive
11 intelligence.

12 Q. Okay. It's also true that you are not
13 concerned that the subsidy, as you describe it, to
14 DPLER would permit DPLER to participate in auctions
15 and drive the price lower.

16 A. Not in and of itself but, yes, I am
17 concerned that DPLER would be receiving subsidized
18 generation from DP&L.

19 Q. Turn --

20 A. And by that they would be bidding in an
21 auction and it would be competing against suppliers
22 like FirstEnergy Solutions who have competitive
23 generation. So the subsidized generation bidding
24 against competitive generation I believe is
25 inappropriate and creates a distorted marketplace.

1 Q. Turn, if you would, again to page 49 of
2 your deposition, Ms. Noewer. Page 49, line 10. Tell
3 me when you are there, please.

4 A. Yes.

5 Q. I asked you the question: "You have --
6 I'm focusing here on prices that result from the
7 auction and is it your concern that the subsidy as
8 you describe it to DPLER will permit DPLER to
9 participate in the auctions and drive the price
10 lower?"

11 Answer: "No."

12 Did I read that accurately?

13 A. Yes, you did. That's not the only place
14 we discussed that though, Mr. Sharkey.

15 Q. That I'm aware. You also told me -- you
16 also told me --

17 A. So I clarified it later as to what I
18 meant by that, just as I did now.

19 Q. You are also aware, aren't you, that,
20 actually, at your deposition you told me that you're
21 not aware of any reason that DPLER would alter its
22 bidding strategies at an auction based upon whether
23 or not DP&L is receiving the SSR?

24 MR. LANG: Objection to form. You're
25 asking her what she told you at the deposition? Or

1 are you asking that question now?

2 EXAMINER MCKENNEY: Please restate the
3 question.

4 MR. SHARKEY: Sure.

5 Q. It's true, isn't it, that you're not
6 aware of any reason that DPLER would alter its
7 bidding strategies at an auction based upon whether
8 or not DP&L is receiving the SSR?

9 A. The distinction I see there, just so that
10 I'm clear on what you're asking me, is that DPLER is
11 a supplier like I am and they get their supply from
12 DP&L. DP&L has subsidized generation which, again,
13 back to the point they would be participating in the
14 auction with subsidized generation.

15 While they're doing that I would think
16 that what they would choose to do would be to bid at
17 a level where they could win the most load.

18 Q. You're right, we did discuss this topic
19 more at your deposition. If you would turn to page
20 55, before we got to that point do you recall we had
21 sort of a lengthy discussion on the subject of what
22 DPLER would do in auctions based upon whether or not
23 DP&L was receiving an SSR?

24 A. We had many lengthy discussions about
25 many topics; I remember that one.

1 Q. You remember that conversation?

2 A. Sure.

3 Q. Okay. And this came toward the end of
4 it. I said, Question: "I think the answer is clear,
5 but it is true that you're not aware of any reason
6 that DPLER would alter its bidding strategies at an
7 auction based upon whether or not DP&L is receiving
8 the SSR."

9 Answer: "I think there certainly could
10 be, as I said, but I don't have a specific example as
11 I sit here today."

12 Did I read that accurately?

13 MR. LANG: Objection, again, it's not
14 impeachment.

15 EXAMINER MCKENNEY: The record is what it
16 is. We'll overrule the objection.

17 Q. It's also true, isn't it, that you can't
18 identify any rational reason that DPLER would change
19 its competitive behavior based upon whether or not
20 DP&L were to receive the SSR?

21 A. My answer is the same as the one that I
22 have said already, and that is that I believe that
23 DPLER's strategy likely in an auction is to bid to
24 win the most tranches that they can, and it may not
25 change that they have that same profit-maximizing

1 strategy, but how they choose to implement it is the
2 issue, and they will have subsidized generation and
3 they would be better able to implement that strategy
4 in a different fashion than if they were a
5 competitive supplier like myself who has market
6 generation.

7 So the word "strategy" is different than
8 how you implement the strategy.

9 Q. Let me ask you this --

10 A. Sounds very similar to our deposition.

11 Q. It does.

12 I want you to assume that DPLER has
13 conducted an analysis and it believes that the market
14 price that it can sell its generation in the future
15 in PJM is \$50, okay? So it has concluded that if it
16 can win tranches at an auction by bidding \$50 and one
17 penny, then that is a better deal than it could get
18 under PJM so it would bid to that level.

19 At \$50 DP&L's indifferent as to whether
20 it wins the auction or sells its power into PJM and
21 at \$49.99 DP&L believes that it would be better off
22 selling its power into PJM and not winning the
23 auction.

24 Can you tell me any reason that DP&L's
25 evaluation of its profit-maximizing strategy at an

1 auction would differ based upon whether or not DP&L
2 is receiving an SSR?

3 A. I didn't follow your question.

4 Q. Okay. Then I'll explain it again.
5 DP&L -- I'm sorry, DPLER has engaged an analysis of
6 what its strategy would be at an auction. DPLER has
7 reached the conclusion that at a \$50 price it's
8 indifferent, meaning it believes it can sell its
9 power into PJM at \$50, or if the price is at \$50 in
10 the auction, then that's the same either way. That
11 was the winning bid.

12 So DP&L concludes that if it can bid --
13 and it would bid down to \$50 and one penny at the
14 auction, but at \$49.99 it would prefer to sell its
15 power into PJM. Do you understand that?

16 A. No. Because I think, again, you keep
17 mixing up "DPLER" and "DP&L" in that example. I
18 guess we should have it reread. And that's exactly
19 my point.

20 Q. I believe I said "DPLER" every time. If
21 I didn't, I'll say it again for you.

22 I want you to assume DPLER reaches a
23 conclusion that its profit-maximizing strategy at an
24 auction is to bid down to \$50 and one penny. At a
25 price of \$50 DPLER would be indifferent because it

1 could either sell at the auction or it believes that
2 the \$50 price would be the price it could sell its
3 power into PJM. And DPLER would not bid \$49.99 at an
4 auction because it believes it could sell its power
5 for more than that at PJM.

6 Do you understand that now?

7 A. I do understand it.

8 Q. Can you tell me any reason that DPLER's
9 bidding strategy, if those were its expectations of
10 future market prices, would change based upon whether
11 or not DP&L was receiving a SSR?

12 A. In that case what you're talking about is
13 what you believe, that DPLER would bid all the way
14 down to market prices. My issue is -- that's not
15 realistic in an auction. That what I'm talking about
16 is that DPLER, having subsidized generation, might
17 bid at a compressed margin, not below market
18 necessarily, but a compressed margin, which means
19 that they would win more of the tranches driving
20 other suppliers out of the market which distorts the
21 market for the long term.

22 So under your scenario it just doesn't
23 make sense to me. Suppliers who are rational
24 suppliers don't bid below market. But that's not
25 what my issue is with this subsidized generation.

1 MR. SHARKEY: Your Honor, could I have my
2 question reread because she did not answer it.

3 MR. LANG: I certainly object, your
4 Honor, I think that was a full and complete answer.

5 EXAMINER MCKENNEY: We will have the
6 question and answer reread.

7 (Record read.)

8 MR. SHARKEY: I would move to strike the
9 entirety of the answer, your Honor, as nonresponsive
10 and ask that the witness be asked to answer my
11 question.

12 MR. LANG: Your Honor, the response was
13 that what he suggested is not realistic and an
14 explanation as to why. That's a full and complete
15 answer. He's obviously unhappy with it, but that's a
16 full and complete answer.

17 EXAMINER MCKENNEY: Mr. Sharkey, I'm
18 inclined to agree with Mr. Lang. Your objection is
19 sustained, yours overruled. I think you both made an
20 objection. Ah, motion to strike, I'm sorry, denied.

21 MR. SHARKEY: I still don't think I've
22 had an answer to my question because although she's
23 rejected it, your Honors, she says she disagrees with
24 the hypothetical. I still don't know whether it's a
25 "yes" or "no" so I'd ask that it be reread to her and

1 that she be asked to answer it.

2 EXAMINER MCKENNEY: Mr. Sharkey, I
3 believe I ruled on the objection.

4 MR. SHARKEY: Yes, your Honor, you ruled
5 on the motion to strike but I still don't believe
6 that I know whether the answer to my question is
7 "yes" or "no" so may I reask it?

8 EXAMINER MCKENNEY: I'll give you some
9 leniency to carry on but we will not reread the
10 question. I believe it was a somewhat responsive and
11 answer to the question which I believe is what
12 Mr. Lang's objection was.

13 MR. SHARKEY: Thank you, your Honor.

14 Q. (By Mr. Sharkey) Ms. Noewer, if DPLER
15 establishes what it believes to be a
16 profit-maximizing strategy at an auction, can you
17 identify for me one rational economic reason that
18 DPLER would change that bidding strategy based upon
19 whether the Dayton Power & Light Company receives an
20 SSR?

21 A. Yes.

22 Q. What's that?

23 A. Because DP&L has subsidized generation
24 which it provides to DPLER. Because DPLER has a
25 profit-maximizing strategy, they may choose to elect

1 in an auction, and when they're implementing that
2 strategy, to bid at a compressed margin. So they win
3 more of the load and the load, then, the load that
4 they win drives other suppliers out.

5 It's also possible that in this auction
6 that suppliers, knowing that DPLER would have
7 subsidized generation, that they may choose to stay
8 away from the auction and the auction price could
9 clear higher.

10 I could see both scenarios happening as a
11 result of having subsidized generation by DPLER.

12 Q. By "compressed margin" you're referring
13 to earning lower or profits on its sales, right?

14 A. Yes.

15 Q. Why would DPLER's decision at an auction
16 as to its profit-maximizing strategy change, meaning
17 we're going to -- DPLER's going to take a lower
18 margin -- step back.

19 I want you to assume that they have
20 concluded their profit-maximizing strategy is
21 strategy A. This is the best we can do and if
22 that's -- if we can't get this at auction, if we
23 can't get this price, we're better off selling into a
24 competitive market.

25 Why would that be different based upon

1 whether or not DP&L is receiving an SSR?

2 A. It's pure economics.

3 Q. Agreed.

4 A. You're a profit-maximizing entity.

5 You're talking about bidding in one auction, right?

6 Is what we're talking about. If, in fact, they win
7 at a compressed margin there and drive other
8 suppliers out of the market that is a long-term
9 economic view on being able to take advantage of the
10 market by driving suppliers out. That's
11 profit-maximizing economic behavior.

12 Q. That's profit-maximizing behavior on
13 behalf of a monopoly in an area where there are
14 barriers to entry, right?

15 A. We're talking about DPLER, I thought it
16 applied to them in this case.

17 Q. So you believe there's barriers to entry
18 to bidding in DP&L's auctions?

19 A. No. I said I believe that DPLER would
20 bid at a compressed margin, potentially, if they had
21 the subsidized generation and it may drive other
22 suppliers out. That's a strategy.

23 Q. You would agree with me that any and
24 all -- strike that.

25 Competitive auctions in Ohio have

1 permitted any and all parties who met the credit
2 requirements to bid, haven't they?

3 A. I don't know what all the details are,
4 but that sounds reasonable.

5 Q. You're suggesting that The Dayton
6 Power -- I'm sorry, that DPLER would attempt to
7 engage in an activity that would, in the short term,
8 be not profit-maximizing but in the long term would
9 be profit-maximizing because it discouraged other
10 bidders from participating in DP&L's auctions, right?

11 A. No. Not exactly. When you are a CRES
12 supplier and you are bidding in auctions and you are
13 a retail participant, you look for competitive
14 markets and where you think you can effectively
15 compete.

16 So to me it's not about driving them out
17 of the next auction. That could happen, certainly,
18 but it's not all about that. It's about, you know,
19 having an unlevel playing field for participation in
20 those auctions.

21 Q. So short term you're concerned that DPLER
22 would bid less than FirstEnergy Solutions.

23 A. Could bid less than others and drive them
24 out. Again, if people and suppliers I mean are
25 aware, though, that DPLER is bidding in the auction

1 with subsidized generation, it could as well do the
2 opposite, that they choose not to participate and the
3 prices can be higher.

4 We're dealing with a lot of hypotheticals
5 here. The point -- my point is that subsidized
6 generation distorts the marketplace.

7 Q. It's true, isn't it, that you're not
8 aware of any specific fact that suggests that DP&L's
9 made any efforts to structure its competitive bidding
10 plan to favor DPLER?

11 A. I'm not aware of any facts.

12 Q. Thank you.

13 Turn to page 10 of your testimony.

14 A. I'm there.

15 Q. You recommend in section 6 that the
16 Commission should order DP&L to implement competitive
17 bidding at a hundred percent rate in year 1, right?

18 A. Yes.

19 Q. It's true, isn't it, that you don't
20 sponsor any testimony regarding the effect that your
21 proposal would have on DP&L's financial integrity?

22 A. No.

23 Q. You agree with me.

24 A. I agree.

25 Q. Turn to page 11 of your testimony. Page

1 11 you make certain proposals to modify DP&L's
2 competitive bidding plan, right?

3 A. Correct.

4 Q. Did you review the competitive bidding
5 plan submitted by DP&L?

6 A. Yes, I did, in its application.

7 Q. Okay. You didn't identify any aspect of
8 that plan that provided any advantage to DPLER as a
9 bidder as compared to other bidders, did you?

10 A. No, I didn't.

11 Q. You understand that DP&L intends to use
12 Charles River Associates as the competitive bidding
13 manager?

14 A. Yes, I do.

15 Q. Okay. And you understand that Charles
16 River Associates has run other auctions in Ohio,
17 right?

18 A. Yes.

19 Q. You don't have any reason to doubt CRA's
20 competence?

21 A. No.

22 Q. You're agreeing with me?

23 A. Oh, yes.

24 THE WITNESS: I apologize, your Honors.

25 Q. And you don't have any reason to doubt

1 their integrity, do you?

2 A. No, I don't.

3 Q. Turn to page 12 of your testimony. At
4 the bottom, line 22, you state that "...FES is
5 strongly opposed to any load caps." And you go on to
6 say that "Load caps serve as an artificial limit on
7 competition...." Right?

8 A. It's a partial sentence, but yes.

9 Q. Okay. You're aware that other Ohio
10 utilities, including FirstEnergy, have had load caps
11 in their competitive auctions?

12 A. Yes, I am aware, and we don't agree with
13 those either.

14 Q. Okay. And the reason that you've
15 described the load cap as a artificial limit on
16 competition is that it may prevent a bidder who would
17 be willing to offer the lowest price from winning the
18 auction, right?

19 A. Yes.

20 Q. Turn, if you would, to page 13 of your
21 testimony.

22 A. I'm there.

23 Q. You mention there that FES opposes some
24 of DP&L's credit limit caps?

25 A. Yes.

1 Q. Okay. It's true, isn't it, that Duke had
2 similar credit limit caps at its auction?

3 A. I'm aware that Duke has an ICT cap as
4 well. I don't recall if it's the exact same levels
5 as this.

6 Q. It's at least similar to DP&L's
7 structure?

8 A. It's similar to the structure.

9 Q. Okay.

10 A. But I don't know about the amounts.

11 Q. Starting on page 13 you address
12 reasonable arrangements, right?

13 A. Yes.

14 Q. You understand that a reasonable
15 arrangement is a contract between DP&L and a
16 customer?

17 A. Yes.

18 Q. Okay. And it's true, isn't it, that
19 you've not reviewed DP&L's reasonable arrangements to
20 determine what the terms and conditions in those
21 contracts are?

22 A. I have not seen the contracts. I have
23 read the applications.

24 Q. Okay. It's your position, isn't it, that
25 the Commission should not interfere with the contract

1 between DP&L and a customer if DP&L and that customer
2 have a firm contract with a firm price?

3 A. I do not believe that there should be
4 interference with the contract. In this case,
5 though, what I'm asking is that the reasonable
6 arrangements, the load be included in the auction,
7 and if that is not an interference with the contract,
8 then I think that should be allowed. It would be a
9 benefit to other customers because it would lower the
10 delta revenue for those customers and it could bring
11 a benefit to those customers if they have, for
12 example, a reference price off the auction load, so
13 it could bring a benefit to the reasonable
14 arrangements customers as well.

15 But my intent was not to interfere with
16 their contract and DP&L would still receive whatever
17 price was in that contract for that customer, just
18 the load would be in auction.

19 Q. You don't know whether the contracts as
20 drafted permit your proposals, do you?

21 A. I don't. Nor do I know that they
22 prohibit them.

23 Q. Turn, if you would, then, to page 17 of
24 your testimony. You address DP&L's request for the
25 AER-N there, right?

1 A. Yes.

2 Q. And you understand that the AER-N is a
3 placeholder for the Yankee facility that it has
4 constructed?

5 A. Yes, I do.

6 Q. Okay. You understand that the Yankee
7 facility is owned or operated by DP&L?

8 A. Yes.

9 Q. Okay. Your testimony does not address
10 whether the Yankee facility was sourced through a
11 competitive bidding process, does it?

12 A. No, it doesn't. My testimony is just at
13 the very fundamental level that the AER-N is improper
14 because generation service is a competitive service.
15 Dr. Lesser, FES's witness, may have more detail on
16 that in his testimony.

17 Q. I'm just asking about yours. Your
18 testimony also does not address whether the Yankee
19 facility was newly used and useful on or after
20 January 1, 2009, right?

21 A. No, it doesn't deal with that.

22 Q. Okay. And your testimony doesn't address
23 whether the Yankee facility was needed as a result of
24 a resource planning process, does it?

25 A. No.

1 Q. Turn, if you would, to page 18 of your
2 testimony.

3 A. I'm there.

4 Q. You address there DP&L's request for an
5 SSR, right?

6 A. Yes.

7 Q. It's true, isn't it, that you don't
8 address -- step back.

9 You understand that DP&L made its
10 application pursuant to Ohio Revised Code
11 4928.143(B)(2)(d), that is its application for the
12 SSR.

13 A. No, I'm not aware of that. I understand
14 what 4928.143 is, I don't recall the statute
15 reference.

16 Q. Turn, then, back to DP&L's exhibits, if
17 you would. Exhibit 103, page 2.

18 A. Okay.

19 Q. Subsection (d) begins with "Terms,
20 conditions, or charges...."

21 A. Okay.

22 Q. Do you recall that I asked you at your
23 deposition whether your testimony addressed whether
24 the elements in that statute were satisfied, and I
25 believe you told me that your testimony does not

1 address that subject?

2 A. I do recall that.

3 Q. And it's true, isn't it, that your
4 testimony does not address whether the subjects of
5 that subsection are satisfied by DP&L's request for
6 an SSR? Right?

7 A. I think that's true except with one
8 exception. I believe that even in my deposition I
9 had an issue with the last part of that section (d)
10 which was "...have the effect of stabilizing or
11 providing certainty regarding retail electric
12 service," and I believe that -- and I believe now
13 that my issue as well is that offering and providing
14 subsidies like the SSR and the ST distorts the
15 marketplace. I don't think it stabilizes retail
16 electric service.

17 Q. It's true, isn't it, that there's nothing
18 in your testimony that addresses whether DP&L can
19 provide stable service within its in territory
20 without the SSR or the ST?

21 A. If by "stable service" you mean
22 distribution service, no. And I think that the
23 testimony in this case has shown by DP&L witnesses
24 that they have adequate resources for their
25 distribution service.

1 Q. So the answer to my question is that
2 there is nothing within your testimony that addresses
3 whether or not the Dayton Power & Light Company could
4 provide stable service, no matter how you describe
5 "stable service," without the SSR or the ST?

6 MR. LANG: Objection. Asked and
7 answered.

8 EXAMINER MCKENNEY: Overruled. The
9 witness can answer the question.

10 THE WITNESS: Thank you.

11 A. Yes.

12 Q. Turn, if you would, to page 19 of your
13 testimony. You address there in subsection 9 items
14 that you describe as barriers to competition, right?

15 A. Yes.

16 Q. Okay. It's true, isn't it, that you
17 can't cite me to any specific rule that DP&L is
18 violating by not having implemented the various items
19 you're asking for?

20 A. No, I don't think it's a matter of
21 violating a rule. It's a matter of promoting and
22 encouraging competition per the statute.

23 MR. SHARKEY: Your Honor, I would move to
24 strike, it's nonresponsive; my question was to any
25 specific rule.

1 MR. LANG: And, your Honor, she said no
2 and gave an explanation of what her testimony is.

3 EXAMINER MCKENNEY: The request to strike
4 is denied.

5 Q. You can't cite me to any specific
6 Commission order that DP&L is violating by not having
7 implemented the various items that you've listed,
8 true?

9 A. True.

10 Q. It's true, isn't it, that your testimony
11 does not contain any analysis of whether the expected
12 benefits of your various proposals exceed the
13 expected costs?

14 A. Correct.

15 Q. You also don't sponsor any analysis or
16 exhibits that show that customers do, in fact,
17 benefit from the type of enhancements that you have
18 identified.

19 A. Could you repeat that, please?

20 Q. Sure. You don't sponsor any analysis,
21 charts, or exhibits that show that customers do, in
22 fact, benefit from the type of enhancements that you
23 have identified.

24 A. I do believe that I don't sponsor any
25 charts or exhibits, that's correct. I do believe in

1 terms of analysis, though, that my discussion on
2 pages 19, 20, 21, 22, 23, and 24, as well as 25, are
3 as a result of my analysis around customer responses
4 to issues that they have in the marketplace. So as a
5 result of understanding what customers' needs are and
6 talking with customers, this is what we're
7 suggesting.

8 Q. You don't make any effort, do you, to
9 quantify the amount of the customer benefits that you
10 believe that they may receive as a result of your
11 various proposals?

12 MR. LANG: Objection to the form. Just
13 to the extent that he referred to her proposals.

14 EXAMINER MCKENNEY: Rephrase the
15 question, please.

16 MR. SHARKEY: Sure.

17 Q. You don't make any effort to quantify,
18 meaning determine a dollar value, that customers
19 would benefit by implementing any of the various
20 proposals that you make in subsection 9 of your
21 testimony, correct?

22 A. Correct. There's no dollar value that
23 would be conducive to be able to actually calculate
24 for many of these things because they promote the
25 customer's satisfaction, a lot of them, as well as

1 facilitate information flow. That would be very
2 difficult to figure out how to calculate that.

3 Q. Okay. You've told me earlier that you
4 don't -- your testimony doesn't have any analysis as
5 to whether the expected benefits of your proposal
6 exceed the expected costs.

7 A. Yes.

8 Q. Okay. You nonetheless expect DP&L's
9 customers to pay for those competitive enhancements
10 that you identify, right?

11 A. Yes.

12 Q. Please turn to page 20 of your testimony.
13 Starting on line 21 you say, quote, "...DP&L does not
14 offer rate ready percentage off price-to-compare
15 billing in its territory," right?

16 A. Yes.

17 Q. It's actually true, isn't it, that CRES
18 providers can make calculations themselves so they
19 can offer percentage-off billing but you believe that
20 the process is overly burdensome because CRES
21 providers have to stay on top of DP&L's
22 price-to-compare?

23 A. I don't think it's a matter of staying on
24 top of it. I think, as we discussed at your
25 deposition -- at my deposition, that it can be very

1 ineffective and it's very difficult, it's not just
2 the PTC but it's also customers' meter reads, there's
3 over 20 in a particular month, and then some of the
4 price-to-compare components are service rendered
5 versus bill rendered.

6 So it's not the calculation of the PTC
7 itself, it's of the components and when they're
8 actually enacted as well as that you would need to
9 make sure that when DP&L did file their tariff
10 filing, that you picked it up quickly, which I think
11 in that case it would be a staying on top of it, as
12 you mentioned.

13 But with all of those factors together it
14 makes it a very difficult thing to calculate on a
15 bill-ready basis when DP&L already has all those
16 components in their system.

17 Q. If you look at page 21 of your testimony,
18 not your deposition, your testimony, at line 10, you
19 in fact state, quote, "...while DP&L technically
20 allows suppliers to submit new rates each time the
21 PTC changes, this process is overly burdensome,
22 inefficient and ineffective. DP&L's PTC changes
23 several times throughout the year. Thus, suppliers
24 would have to stay on top of DP&L's PTC changes and
25 submit new rates each time it changes."

1 Did I read that accurately?

2 A. Yes, you did. And there's also below
3 that it talks about the issues that further
4 complicate it that I also mentioned.

5 Q. Turn, if you would, to page 22 of your
6 testimony.

7 A. I'm there.

8 Q. At the top of the page you complain about
9 DP&L's 20-cent charge per consolidated bill and
10 12-cent charge per dual bill.

11 A. Yes, I do.

12 Q. Okay. Do you know whether those charges
13 were established pursuant to a stipulation that was
14 approved by a Commission order?

15 A. I do believe in the testimony here that I
16 have learned that, yes.

17 Q. Okay. It's also true, isn't it, that FES
18 typically uses consolidated billing when it is
19 serving residential customers?

20 A. I don't think it's really competitive
21 intelligence, that's why I was hesitating, so I'll
22 answer yes.

23 Q. If DP&L did not offer consolidated
24 billing, then FES would have to incur costs
25 associated with printing and postage to bill its

1 customers, right?

2 A. If it decided to mail them a bill instead
3 of submit it electronically, yes.

4 Q. Okay.

5 A. If not, no.

6 Q. So under the assumption it's mailing its
7 bills, the fact that DP&L is offering consolidated
8 billing allows for the total cost for DP&L and FES
9 printing and postage to be cut approximately in half,
10 right?

11 A. That's what we discussed at my
12 deposition. Now I'm a little confused by the numbers
13 that are flying around in the hearing. I'm not sure
14 what the cost is anymore.

15 Q. Well, if you assume that DP&L and FES
16 would have approximately the same printing and
17 postage figures, the fact that now there only needs
18 to be one bill printed and one set of postage put on
19 the bill would cut the total cost approximately in
20 half, right?

21 A. There's a lot of assumptions there that
22 costs would be the same. In addition to that, you
23 know, in the testimony that I've heard here I believe
24 that DP&L is already recovering through its
25 distribution rates for those charges so I might argue

1 now that, in fact, we're getting double-charged
2 instead of in half.

3 Q. Ms. Noewer, my question is: If DP&L and
4 FES had roughly the same costs of printing and
5 mailing a bill, the fact that FES no longer has to
6 incur those costs when it uses consolidated billing
7 means that those costs would be cut approximately in
8 half. Right?

9 MR. LANG: I would object to the
10 hypothetical. It's incomplete and it assumes facts
11 that are absolutely not in evidence with regard to
12 costs.

13 EXAMINER MCKENNEY: Objection's
14 overruled.

15 Please remember to add the "all else
16 being equal" to your hypotheticals.

17 And, Ms. Noewer, I would ask that you
18 please be responsive directly to the questions that
19 are asked of you.

20 THE WITNESS: Yes, your Honor.

21 EXAMINER MCKENNEY: Thank you. You may
22 answer his hypothetical question.

23 THE WITNESS: Yes, sir.

24 MR. SHARKEY: Could you reread it to her,
25 please?

1 (Record read.)

2 A. I suppose if we chose to mail it and not
3 electronically send it, yes.

4 Q. Okay. And it's true, isn't it, that
5 you're not suggesting that FES shouldn't pay some
6 amount towards the postage and the printing costs
7 that DP&L incurs?

8 A. At a policy level I think no. I think
9 that -- that the billing, much like the rest of the
10 state, that the utilities provide that without
11 charging to CRES suppliers, I believe that that is
12 the case.

13 In fact, when we spoke in my deposition,
14 I indicated that I thought there was a section in
15 there when we were going through that that I
16 mentioned that I thought we could pay part of it. I
17 don't believe that at a policy level, and I think we
18 have paid for the last couple of years for that
19 service.

20 Q. Turn, if you would, back to your
21 deposition, page 115, Ms. Noewer.

22 A. Yes.

23 MR. LANG: What was the page reference,
24 please?

25 MR. SHARKEY: 115.

1 Q. Line 18. You recall, as you can look at
2 above, that we were talking about the costs being cut
3 approximately in half by using consolidated billing;
4 the same topic we were just discussing, right?

5 A. Yes.

6 Q. And then on line 18 I asked you the
7 question, the question is: "Why should FirstEnergy
8 Solutions get the entirety of that cost savings
9 instead of sharing that cost savings with DP&L?"

10 Answer: "Even if that were true, which
11 I'm not suggesting that maybe suppliers shouldn't pay
12 something, but 20 cents per bill is egregious."

13 Did I read that accurately?

14 A. Yes, you did.

15 MR. LANG: Just for the record,
16 objection, it's not impeachment.

17 EXAMINER MCKENNEY: Objection's noted.
18 Overruled.

19 Q. My last topic.

20 It's true, isn't it, that you don't
21 sponsor any testimony regarding whether DP&L can
22 maintain its financial integrity if the proposals in
23 your testimony were implemented?

24 A. No.

25 Q. You would agree with me that there's

1 nothing in your testimony.

2 A. Yes.

3 Q. It's also true, isn't it, that your
4 testimony does not address whether DP&L can provide
5 reliable service if some or all of your proposals
6 were implemented?

7 A. Not in my testimony, no.

8 Q. Okay. You also believe that it's in
9 FES's best interest that DP&L be able to provide
10 reliable service, don't you?

11 A. Yes, I do, and I think that they, through
12 their distribution, they do.

13 Q. And you agree with me that it's in FES's
14 best interest that DP&L continue to have sufficient
15 funds that it could provide reliable distribution
16 service, right?

17 A. That it can provide reliable distribution
18 service, and if it can't, it should file a
19 distribution case.

20 MR. SHARKEY: Thank you, Ms. Noewer.

21 Your Honors, I have no further questions.

22 EXAMINER MCKENNEY: Thank you.

23 Staff?

24 MR. MARGARD: Yes, perhaps a couple.

25 Thank you, your Honor.

CROSS-EXAMINATION

By Mr. Margard:

Q. Good afternoon.

A. Good afternoon.

Q. Do I understand your testimony that you believe that the company's proposed ESP will result in a subsidization of its generation?

A. Yes.

Q. And you've testified that subsidizing generation distorts the market.

A. Yes.

Q. And the prospect, the potential for this market distortion could affect participation in the competitive auction?

A. Yes.

Q. Do you offer an opinion as to whether the company's affiliate, DPLER, should participate as part of that auction, given that potential?

A. I do have an opinion. It's in my testimony that they should not. While they're not corporately separated and while they're receiving a subsidy. While DP&L is receiving a subsidy.

Q. And do you have an opinion as to whether the company itself should participate as part of the auction?

1 A. I do have an opinion, and I believe that
2 they should not. DP&L should not.

3 MR. MARGARD: Thank you, your Honor.
4 That's all I have.

5 EXAMINER MCKENNEY: Do we -- did we make
6 it around the table? Did we ask everyone if they had
7 cross?

8 We're to redirect.

9 Mr. Lang?

10 MR. ALEXANDER: Could we take a --

11 EXAMINER MCKENNEY: Would you like a
12 minute?

13 MR. LANG: Yes, please.

14 EXAMINER MCKENNEY: All right. Let's go
15 off the record.

16 (Recess taken.)

17 EXAMINER MCKENNEY: Let's go back on the
18 record.

19 Mr. Lang, redirect?

20 MR. LANG: Thank you, your Honor.

21 - - -

22 REDIRECT EXAMINATION

23 By Mr. Lang:

24 Q. One question, Ms. Noewer. Mr. Sharkey
25 asked you a series of questions about subsidies and

1 their impact on DPLER, D-P-L-E-R. Is it also your
2 testimony that the subsidized generation has an
3 impact on DP&L itself?

4 MR. SHARKEY: Objection, your Honor.
5 It's beyond the scope of cross.

6 EXAMINER MCKENNEY: I'll allow the
7 question. Overruled.

8 A. Yes, it is. I do believe that DP&L, as
9 the owner of the subsidized generation as well as
10 getting subsidies, if they were to get those in this
11 case, would definitely be able to use that to improve
12 their generating facilities, make environmental
13 retrofits, and do other things to improve their
14 facilities that the suppliers in competitive markets
15 like FirstEnergy Solutions would not have the subsidy
16 to be able to do, and it would make it, then,
17 therefore, again, another unlevel playing field.

18 MR. LANG: No further questions.

19 Thank you, your Honor.

20 EXAMINER MCKENNEY: Recross,
21 Mr. Petricoff?

22 MR. PETRICOFF: No, your Honor.

23 EXAMINER MCKENNEY: Mr. Berger?

24 MR. BERGER: No.

25 EXAMINER MCKENNEY: Ms. Bojko?

1 MS. BOJKO: No, your Honor.

2 MR. WILLIAMS: No, thank you, your Honor.

3 MR. DARR: No, your Honor.

4 EXAMINER MCKENNEY: Mr. Sharkey?

5 MR. SHARKEY: Yes.

6 - - -

7 RECROSS-EXAMINATION

8 By Mr. Sharkey:

9 Q. You're aware that various Ohio utilities
10 have received nonbypassable charges for years, right?

11 A. "For years" did you say?

12 Q. Yes.

13 A. I'm not aware of anything specific. Do
14 you have a specific reference?

15 Q. Well, you know The Dayton Power & Light
16 Company has been receiving the rate stabilization
17 charge for years, right?

18 A. Yes.

19 Q. You're aware that Duke has been receiving
20 a nonbypassable charge for a number of years?

21 A. I'm aware that Duke is receiving, as a
22 part of their stipulation, an electric stability
23 charge, yes.

24 Q. Okay. And AEP is receiving a
25 nonbypassable charge as well, right?

1 A. Yes.

2 Q. And you've offered the opinion that the
3 receipt by those utilities of those nonbypassable
4 charges would create a competitive disadvantage to
5 CRES providers, right?

6 A. In the case where the utility still owns
7 the generation and is not corporately separated, yes.

8 Q. You haven't sponsored any study or
9 analysis that shows that, in fact, CRES providers
10 have been injured as a result of these items that you
11 call subsidies, do you?

12 A. I'm not referring to the other
13 nonbypassable charges. I'm referring to this case
14 and the potential for injury because there's
15 subsidized generation that could bid in auctions.

16 Q. You don't sponsor any testimony that
17 contains any analysis that shows that any CRES
18 providers have, in fact, been injured as a result of
19 nonbypassable charges that have been paid to any Ohio
20 utilities, right?

21 A. No, I don't think it's an injury, I think
22 it distorts the market.

23 Q. You don't sponsor any exhibits or
24 analysis that shows, in fact, that there has been a
25 distortion of the marketplace, do you?

1 A. Not specifically, no.

2 MR. SHARKEY: Thank you, your Honors. No
3 further questions.

4 EXAMINER MCKENNEY: Thank you.
5 Staff?

6 MR. MARGARD: No, thank you, your Honor.

7 EXAMINER MCKENNEY: Examiner Price?

8 - - -

9 EXAMINATION

10 By Examiner Price:

11 Q. I have a couple briefly.

12 You support the six competitive
13 enhancements that Dayton Power & Light has proposed
14 in their ESP.

15 A. Yes. I'm not sure, your Honor, I would
16 refer to them as "enhancements."

17 Q. The six modifications that they have
18 proposed.

19 A. Yes, sir.

20 Q. I've asked this question of other
21 witnesses, but if the Commission were to determine
22 that it is either the case that CRES providers will
23 pay for these enhancements or that the enhancements
24 not be implemented, what would your recommendation to
25 the Commission be?

1 A. I think at the policy level, you're
2 giving me only one of two choices --

3 Q. Yes indeed.

4 A. On purpose, I'm sure.

5 I don't think it's right that they
6 shouldn't be implemented, but I also don't believe
7 that suppliers should pay for them because they're
8 benefits to customers and they should be borne by
9 customers.

10 Q. So would you prefer that they not be
11 implemented than have CRES providers pay for them?

12 A. That's right.

13 Q. Thank you. It's been a very consistent
14 opinion, nobody wants to pay for these
15 implementations.

16 A. I understand. I understand. It's a
17 policy of the state, though, to continue to further
18 competition and we see that as a benefit like you
19 would pay -- customers would pay for economic
20 development.

21 Q. Exactly.

22 You do not propose on page 25 in your
23 recommendations for improving competition, you do not
24 propose a purchase of receivables program; is that
25 correct?

1 A. That's correct.

2 Q. Are you opposed to a purchase of
3 receivables program?

4 A. No, we're not. In fact, we participate
5 in them in other states.

6 Q. You're simply indifferent.

7 A. Yes.

8 Q. You do not support or oppose.

9 A. Correct.

10 Q. You do not propose that Dayton implement
11 supplier consolidated billing; is that correct?

12 A. Correct.

13 Q. Are you indifferent or you're opposed to
14 it?

15 A. Not opposed. Indifferent at this point
16 because at this point our focus at a policy level is
17 getting all the competitive enhancements in the state
18 to a consistent basis where we can operate as a CRES
19 supplier most effectively. And I think supplier
20 consolidated billing is a lofty goal, we're just
21 trying to get, you know, consistency first. So we're
22 not opposed to it.

23 EXAMINER PRICE: Thank you. You're
24 excused.

25 EXAMINER McKENNEY: Mr. Lang.

1 MR. LANG: Your Honor, I move FES
2 Exhibits 17 and 17A.

3 EXAMINER MCKENNEY: Any objections?
4 (No response.)

5 EXAMINER MCKENNEY: They will be
6 admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 EXAMINER MCKENNEY: Mr. Petricoff.

9 MR. PETRICOFF: Thank you, your Honor.
10 At this time RESA would like to call to the stand
11 Stephen E. Bennett.

12 (Witness sworn.)

13 EXAMINER PRICE: Please be seated and
14 state your name and business address for the record.

15 THE WITNESS: My name is Stephen Bennett,
16 my business address is 2 North Ninth Street,
17 Allentown, Pennsylvania, 18101.

18 EXAMINER PRICE: Please proceed,
19 Mr. Petricoff.

20 MR. PETRICOFF: Thank you, your Honor.
21 Your Honor, at this time I'd like to have marked as
22 RESA Exhibit No. 6 the direct prepared testimony of
23 Stephen E. Bennett.

24 EXAMINER PRICE: It will be so marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 STEPHEN E. BENNETT

2 being first duly sworn, as prescribed by law, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Petricoff:

6 Q. Mr. Bennett, by whom are you employed and
7 what is your title?

8 A. PPL Energy Plus as senior manager of
9 regulatory policy.

10 Q. And PPL Energy Plus is a member of the
11 Resale Energy Supplier Association which I'll refer
12 to as "RESA."

13 A. Yes, it is.

14 Q. And on whose behalf do you appear today?

15 A. On behalf of the Retail Energy Supply
16 Association.

17 Q. Do you have with you what's just been
18 marked as RESA Exhibit No. 6?

19 A. Yes, I do.

20 Q. Is that your direct prepared testimony?

21 A. Yes, it is.

22 Q. Was it written by you or under your
23 direction?

24 A. It was written under my direction.

25 Q. Are there any changes or amendments that

1 you'd like to make to that testimony?

2 A. Yes. On page -- sorry. On page 7. On
3 page 7, lines 21, 22, and 23 should be removed.

4 Q. Are there any other changes?

5 A. Yes. And that was on page 16, line 10,
6 the words "\$13 increase" should be replaced by a
7 "\$7 increase exclusive of TCRR-N costs."

8 Q. With those two changes if I were to ask
9 you all the questions that are contained in RESA
10 Exhibit 6 today, would your answers be the same?

11 A. They would.

12 MR. PETRICOFF: Your Honor, the witness
13 is available for cross-examination.

14 EXAMINER PRICE: Thank you.

15 I'll ask my question first, which you
16 probably just heard me ask the previous witness. Are
17 you supportive of the six competitive enhancements
18 that Dayton Power & Light has proposed in their ESP?

19 THE WITNESS: We are.

20 EXAMINER PRICE: The Commission's faced
21 with three choices; they can approve the
22 implementation of those changes and have CRES
23 providers pay for it, they can approve the
24 implementation of those changes and have customers
25 pay for it, or they can not approve the

1 implementation of those measures.

2 My guess is that your preferred choice
3 there would be to approve the implementation of the
4 measures and have the customers pay for it; is that
5 correct?

6 THE WITNESS: In this case, yes, RESA
7 believes that it would be improper for the CRES
8 providers to directly pay for enhancements or
9 improvements that would simply bring DP&L up to the
10 standards that we see in other jurisdictions in Ohio
11 and outside of Ohio.

12 EXAMINER PRICE: In the event the
13 Commission were to take your preferred alternative
14 off the table, the choice is to have CRES providers
15 pay for these enhancements or not go forward with the
16 enhancements, which option would you prefer?

17 THE WITNESS: So similarly, since that's
18 kind of a, you know, take-it-or-leave-it type --

19 EXAMINER PRICE: Trick question.

20 THE WITNESS: Yes, trick question. I
21 would say that ideally perhaps somebody, an expert,
22 could be brought in to take a look at that, do a
23 cost-benefit analysis. But if you really said either
24 the CRES providers pay or you don't get them, I would
25 need to look through each one individually and

1 probably make an assessment because with the, you
2 know, with more cost data it's possible that some of
3 them just are so fundamental to the marketplace that
4 it would make sense to have the CRES providers pay
5 but, again, generally I think that improving the DP&L
6 system to bring it up to spec. with other
7 jurisdictions is not appropriate for the CRESs to pay
8 directly.

9 EXAMINER PRICE: And the individual
10 changes have different values to you as a CRES
11 provider.

12 THE WITNESS: That's correct.

13 EXAMINER PRICE: Thank you.

14 Consumers' Counsel.

15 MR. BERGER: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Berger:

19 Q. Good evening, Mr. Bennett.

20 A. Good evening.

21 Q. Mr. Bennett, have you assessed the cost
22 of implementing your proposed EDI changes?

23 A. No. Not internally to RESA, no.

24 Q. And you haven't proposed any cost
25 recovery mechanism for them, have you?

1 A. Not in testimony, no.

2 Q. And the same with respect to your
3 proposed POR program, you don't have any proposal
4 with respect to paying for it, do you?

5 A. Not in my testimony.

6 Q. You don't have any calculation of the
7 costs or a proposal with respect to the recovery of
8 those costs, do you?

9 A. No.

10 Q. Mr. Bennett, if base rates were reduced
11 such that the billing costs included in base rates
12 were only those associated with SSO customers, would
13 you agree that CRES suppliers should pay the
14 incremental cost associated with consolidated billing
15 under your proposal?

16 A. I'm -- there's a couple different kinds
17 of consolidated billing. Do you mean utilities or
18 suppliers consolidated billing?

19 Q. With the utility consolidating billing.

20 A. Consolidated billing, okay. So if I
21 understand the question correctly, you're saying if
22 the DPL -- DP&L SSO rates were unbundled down to just
23 generation and then there was an incremental cost to
24 issue a utility consolidated bill on behalf of the
25 CRES providers, would RESA support paying that --

1 paying that amount, that's the -- okay.

2 Let me think about that for a second.

3 I suppose that if it was possible to
4 completely unbundle the SSO rates to the point where
5 all costs associated with serving the commodity
6 service were unbundled and SSO service was completely
7 reflective of all of those costs, then yes, it may
8 make sense to have incremental costs borne by the
9 CRES providers. I don't think we're anywhere close
10 to that level of unbundling here in Ohio let alone in
11 DP&L.

12 Q. Have you compared the cost charged by
13 DP&L for billing to those provided by other providers
14 for billing services?

15 A. To Duke Energy Ohio.

16 Q. What's the comparison you made?

17 A. Well, my understanding of the tariff in
18 Duke Energy Ohio is that they charge only for
19 bill-ready consolidated billing, there's no charge
20 for rate-ready consolidated billing, and the charge
21 is approximately 6 cents per bill per residential, I
22 believe roughly 26 cents per bill for commercial, and
23 then \$3, and I don't recall, I believe it's 350 but I
24 wouldn't be able to say and I don't have it in front
25 of me for industrial, I'm sorry, for the industrial

1 class.

2 Q. And I think you talk in your testimony
3 about the charge for rate-ready billing code
4 modification.

5 A. Yes. The thousand dollar charge,
6 correct.

7 Q. Yes. Do other providers with billing
8 services offer other rates? Are you familiar with
9 what they are?

10 A. Not off the top of my head, no.

11 Q. And what is the fee for requesting
12 interval data that's charged to suppliers?

13 A. From DP&L?

14 Q. Yes.

15 A. I don't recall from the top of my head.

16 Q. Would you expect that there's a cost
17 associated with conveying that interval data to
18 suppliers that's not covered by the meter cost
19 itself?

20 A. It's possible. I wouldn't know, I don't
21 know the DP&L cost structure.

22 Q. Okay. On page 17 of your testimony,
23 Mr. Bennett, you make a comment about switching
24 tracker and indicate that shopping customers will see
25 a larger increase in DP&L charges through the

1 switching tracker proposed by the company than
2 nonshopping customers. Do you see that?

3 A. Are you talking about answer 33 on
4 page 17?

5 Q. Yes. Do you see at lines 7 and 8?

6 A. Yes, I do on 7 and 8. Yes.

7 Q. I'm not sure I understand how that can
8 be. Can you explain that? How is it that shopping
9 customers will see a larger increase in DP&L charges
10 through its switching tracker?

11 A. I think that's -- I believe that was
12 meant to be on a relative basis. A percentage
13 increase.

14 Q. Relative to what?

15 A. That a shopping customer -- under the
16 rate structure proposed in the ESP plan, a shopping
17 customer would see a larger percentage increase
18 overall in its rates versus the percentage increase
19 seen by an SSO customer.

20 Q. You're just talking about the utility
21 portion of the bill?

22 A. The entire -- let me think about that.

23 No, I believe our calculation -- our
24 estimates were based on the entire bill. On an
25 entire bill based on a hypothetical customer example.

1 Q. Where the generation costs were the same
2 other than the switching tracker?

3 A. No. The generation costs would have been
4 proposed ESP rates versus I believe it was the lowest
5 residential offer on the Apples to Apples chart as of
6 March 8th in the DP&L territory.

7 So the generation for the shopping
8 customer would have been based on the lowest Apples
9 to Apples rate publicly available on the PUCO website
10 and the generation for the nonshopping customer, the
11 SSO customer, would be based on the proposed rates in
12 the ESP.

13 Q. And that's why the shopping customer
14 would see a larger increase, because they're starting
15 out at a lower level?

16 A. That's part of it. My recollection of
17 the workpapers is that with -- the ESP lowers some
18 rates and increases some rates, so in the end it's a
19 relatively small overall rate change, whereas the
20 total rate impact of the ESP on the shopping customer
21 would be higher.

22 Q. Do you disagree with the company that
23 switching is causing its financial integrity
24 problems?

25 A. I don't think I have enough insight into

1 their finances to know what is or all the things that
2 are causing their financial problems.

3 Q. Well, assuming that that were true for a
4 moment, do you think that -- do you think that cost
5 causation is an important principle and that if
6 customer switching is causing those problems,
7 switching customers should be bearing the costs
8 associated with the switching tracker?

9 A. Well, I think there's two separate
10 concepts that they're talk about here. One, is cost
11 causation an important principle; yes, it's
12 fundamental to competitive markets.

13 The idea that switching customers are
14 somehow causing costs to a utility, I don't -- I
15 don't really perceive it that way. I mean, there's a
16 statutory ability for a customer to choose a CRES
17 provider, you know, it's not a malicious act. It's
18 not something that's meant to cause a cost or not
19 cause a cost.

20 Q. Well, I'm just asking you to assume that
21 the company is correct, the financial integrity is --
22 its problems are caused by the fact that customers
23 are switching. And if that were the case, wouldn't
24 switching customers be responsible for the costs?

25 A. I would say -- I would say no because --

1 for a number of reasons. One, the switching
2 customers of today may return to the SSO service
3 tomorrow and those that are on SSO now may switch
4 later. You know, DP&L is talking about proposing a
5 transition to a competitive -- a fully competitive
6 wholesale and retail structure.

7 If utilities were allowed to simply say
8 "Anybody that's switching is costing us money so
9 we're going to charge switchers," then every utility
10 in Ohio and other jurisdictions would be able to put
11 up an almost un -- you know, a barrier that would be
12 very, very difficult to overcome.

13 It's -- I don't think I or anybody in
14 RESA has ever thought of the idea that just because a
15 customer exercises its statutory right to select a
16 CRES provider, that that's causing the financial
17 hardships that DP&L is currently facing.

18 So I understand that you're asking me to
19 assume that but it's very difficult for me to assume
20 that because it seems like it's a bit of a stretch
21 for me from a hypothetical.

22 Q. Okay. Thank you.

23 MR. BERGER: That's all I have, your
24 Honor.

25 EXAMINER PRICE: Ms. Bojko?

1 MS. BOJKO: No questions, your Honor.

2 EXAMINER MCKENNEY: Mr. Williams?

3 MR. WILLIAMS: No questions, your Honors.

4 EXAMINER PRICE: Mr. Alexander?

5 MR. ALEXANDER: Just a couple follow-up
6 questions.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Alexander:

10 Q. Mr. Bennett, my name is Trevor Alexander,
11 I represent FirstEnergy Solutions, I have a followup
12 in your conversation with Mr. Berger.

13 You discussed billing charges in Duke's
14 service territory. Do you remember that
15 conversation?

16 A. Yes, I do.

17 Q. Is the Duke bill-ready billing system
18 currently operational?

19 A. Actually, I don't know. I know -- yeah.
20 I don't know.

21 Q. And so you don't know whether anyone is
22 currently being charged the rates you provided to
23 Mr. Berger for bill-ready billing?

24 A. Correct. I don't know for sure that
25 anybody is billing. I simply looked at their tariff

1 to ascertain their rates that are in the tariff.

2 Q. And do you know whether Duke has agreed
3 to change the rates which are in that tariff when the
4 bill-ready billing system goes into effect?

5 A. I don't know. I don't know if that's the
6 case or not. I'm unaware.

7 MR. ALEXANDER: Okay. Thank you very
8 much.

9 EXAMINER PRICE: Mr. Darr?

10 MR. DARR: No questions.

11 EXAMINER PRICE: Mr. Yurick?

12 MR. YURICK: No questions. Thank you,
13 your Honor.

14 EXAMINER MCKENNEY: Mr. Faruki?

15 MR. FARUKI: Thank you, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Faruki:

19 Q. Good evening.

20 A. Good evening.

21 Q. You and I know each other, you know I
22 represent DP&L. I understand you have a flight
23 tonight, I'll do my best.

24 Your employer, PPL Energy Plus, is a CRES
25 provider but not licensed in Ohio; is that right?

1 A. That's correct.

2 Q. And you are basically presenting
3 testimony on behalf of RESA. Some of RESA's members
4 are competitors of DP&L; is that right?

5 A. Some of RESA's members are CRES providers
6 licensed in Ohio and serve in the DP&L territory.

7 Q. Okay.

8 EXAMINER PRICE: One member of RESA is an
9 affiliate of Dayton Power & Light.

10 THE WITNESS: Yes, that's correct.
11 MC-Squared.

12 Q. Your first issue about interval meters,
13 if you want to turn to that, it's page 3 of your
14 testimony. If a customer has a hundred kilowatts of
15 demand, you don't know what percentage of the bill
16 that customer could save by signing up with a CRES
17 provider that competes with DP&L, do you?

18 A. No.

19 Q. In preparation of your testimony you did
20 not study that type of question?

21 A. Correct.

22 Q. You have not made any analysis to
23 determine a payback period for a customer investment
24 in an interval meter; is that right?

25 A. Also correct.

1 Q. Nor, to your knowledge, has RESA.

2 A. Correct.

3 Q. You are unable -- I'm seeing if I can
4 shorten this up, Stephen. You are unable to tell me
5 whether or not customers have switched or how many
6 have switched because of the cost of an interval
7 meter; is that right?

8 A. That's also correct.

9 Q. Are you aware that most of DP&L's
10 customers in the range of a hundred kilowatts of
11 demand have already switched?

12 A. Not specifically. I don't know that I
13 have access to data at that level. But I know that's
14 what we discussed in my deposition.

15 Q. Generally, a CRES provider would want to
16 know how much energy a customer is using in order to
17 quote a price to that customer; is that right?

18 A. They must know how much energy that
19 customer is using.

20 Q. That type of information can come from an
21 interval meter?

22 A. It can.

23 Q. With regard to your question 11, or your
24 answer to question 11, we discussed that at your
25 deposition. Before preparing your testimony you did

1 not examine whether there are utilities in Ohio other
2 than DP&L with interval meter thresholds other than a
3 hundred kilowatts, did you?

4 A. I did not at that time. I have since.

5 Q. And on your testimony in particular at
6 line -- page 4, sorry, line 5, you argue that CRES
7 providers should receive the data free of charge,
8 right?

9 A. Correct.

10 Q. To shorten that up, is it accurate that,
11 as a CRES provider representative, you would want the
12 data free of charge even if there's a cost to create,
13 handle, or manage it?

14 A. I would want the data free of charge if
15 the customer has already -- based on the rates that
16 they've paid to support the implementation and
17 upgrades of the DP&L billing system, the cost that
18 the customers paid to implement the meter, the costs
19 that the customers paid to implement the telemetry,
20 all reasonably compensated the utility for the costs
21 associated with the data, managing the data, and
22 providing the data, yes, I would want that free of
23 charge.

24 I certainly would not want to double-pay
25 or have the customer double-pay DP&L for the

1 privilege of receiving their own data for their
2 authorized supplier.

3 Q. Isn't it true, sir, that you don't have
4 an economic rationale for providing data for free to
5 CRES providers which are competitors of the utility
6 while having the utility bear the cost of creation,
7 handling, or managing data that the CRES providers
8 need?

9 A. There's no -- I mean, in the utility cost
10 recovery model there's no rationale for the utility
11 to bear the costs. However, again, if the utility's
12 already being -- having cost recovery through rates
13 and through customer fees, then I wouldn't want the
14 customer or the CRES provider double-paying for those
15 charges.

16 Q. Okay. I'm not asking about
17 double-payment. I'm asking you whether you have an
18 economic rationale for having the data be provided
19 but the utility bearing the cost of creation or
20 handling or managing it.

21 A. No. If it's really truly the case that
22 the utility is incurring a cost that's not recovered
23 elsewhere, then I wouldn't propose getting that data
24 for free.

25 Q. Do you know whether some utilities

1 provide interval data for a charge?

2 A. My understanding is that some do and some
3 do not.

4 Q. Go on to issue 2. This is your web-based
5 system and the EDI data exchange; is that right?

6 A. Yes.

7 Q. Before formulating your testimony you did
8 not even read the testimony of Dona Seger-Lawson,
9 DP&L's witness, on that subject, did you?

10 A. That's correct.

11 Q. Your testimony was the result of a
12 collaboration among RESA members and counsel, and you
13 don't know if any of that was borrowed from previous
14 testimony; is that right?

15 A. Not specifically, no.

16 Q. If we talk about the benefits to market
17 participants for a minute, one by one perhaps, first
18 the retail competitive enhancements that DP&L
19 sponsors, including the web-based system and the EDI
20 data exchange are ones that will benefit CRES
21 providers; is that right?

22 A. In total the programs proposed by DP&L
23 will, because they benefit the marketplace and the
24 market participants and CRES providers are market
25 participants, then, yes, CRES providers will receive

1 a benefit. Not exclusive benefit but they will
2 receive a benefit.

3 Q. And if you turn to page 5, the first full
4 sentence, it's kind of a long sentence so I'm not
5 going to read it to you, but with that in front of
6 you you agree with me that CRES providers would
7 benefit from industry standard data formats because
8 CRES providers would require fewer modifications of
9 their existing systems if those industry standard
10 formats were available; is that right?

11 A. Yeah. The more standardization there is
12 across the industry, the more efficiency there is,
13 that means efficiency in the CRES provider systems,
14 that means efficiency in the utility's interaction
15 with the CRES providers, and efficiency in the
16 customers receiving pricing and timely enrollment.

17 Q. If you go down to page 11 where you have
18 a recommendation that DP&L be directed to implement a
19 web-based system with certain features, do you see
20 that?

21 A. I'm sorry, I heard you wrong, you said
22 page --

23 Q. I'm sorry. Maybe I misspoke. Page 5,
24 line 11 --

25 A. Line 11.

1 Q. -- is what I meant to say.

2 A. I think I misheard, I apologize. Yes.

3 Q. You have no idea of the cost of doing
4 that, do you?

5 A. Not -- let's see, how do I answer this?
6 I'm struggling because I just don't know
7 if it's in the record or not.

8 Q. It's in your deposition.

9 A. So I'll say no, not in exhaustive detail.

10 Q. Okay. Since you said "no, not in
11 exhaustive detail," we'll look briefly at your
12 deposition.

13 A. Okay.

14 Q. Oh, you have one?

15 A. I do.

16 EXAMINER PRICE: Thank you.

17 Q. If you look with me at page 22, it starts
18 on line 2 and I asked you about this same question
19 and answer 22, line 2, "On page 5, line 11 you
20 indicate that in your view the Commission should
21 direct DP&L to implement a web-based system. And
22 then you go on to describe some of the features of
23 it; is that right?"

24 Answer: "Correct."

25 "Do you have any idea of the cost of so

1 doing?"

2 Answer: "I do not."

3 Have I read that correctly?

4 A. You did.

5 Q. Is it also true that you have no idea of
6 the timeframe that it would take to develop, test, or
7 implement such a system?

8 A. I do not.

9 Q. And, again, to shorten this up, in
10 deposition when I asked you how RESA would expect to
11 pay for this or have its members active in Ohio pay
12 for this system, your testimony is that RESA has no
13 expectation about whether or not it or its members
14 would pay. Is that right?

15 A. That's correct. The details of the
16 implementation are important in answering that
17 question.

18 Q. And your testimony has no specific
19 suggestion or proposal on how to pay for that system.

20 A. That's correct.

21 Q. All right. If I can press you on that
22 point, though, you agree with me that RESA has
23 expressed a willingness to contribute to the
24 development of retail enhancements; is that right?

25 A. In certain specific situations under

1 certain circumstances, yes.

2 Q. But in terms of the record for this case,
3 your testimony is silent on any cost recovery
4 mechanism.

5 A. Correct.

6 Q. Page 5, line 13, you --

7 MR. PETRICOFF: Of his testimony?

8 MR. FARUKI: Yes. I'll flag the depo,
9 Howard.

10 MR. PETRICOFF: All right.

11 Q. Page 5, line 13, you have a six-month
12 recommendation I wanted to ask about where, in a
13 nutshell, you say "...no later than six months after
14 the Commission's Opinion and Order in this case" DP&L
15 should be ordered to implement the system.

16 However, that six-month deadline is being
17 suggested without any previous experience and without
18 any assessment or analysis of how much time it would
19 actually take to implement this system; is that
20 right?

21 A. That's correct. It was proposed as a
22 placeholder in order to make sure that the
23 implementation effort didn't drag on beyond a
24 reasonable timeframe.

25 Q. May be a placeholder, but you don't know

1 if it would take more than six months to do what
2 you're suggesting.

3 A. That's correct, I do not.

4 Q. Okay. Then if you look at line 14, your
5 "to assist in improving" sentence, again, I won't
6 read it but you have that reference?

7 A. Correct.

8 Q. I went through this long list that you
9 have that starts on line 18 and goes over on to
10 page 7 and by my count, which I'll ask you to accept
11 subject to check, you have a list of 36 features that
12 you want, am I correct that this list of features is
13 essentially the standard list of EDI and web-based
14 system features that RESA has advocated in multiple
15 jurisdictions?

16 A. Correct.

17 Q. But you don't know of any one
18 jurisdiction that has adopted all of the features on
19 this wish list, do you?

20 A. I do not.

21 Q. And you don't know what the cost of such
22 a system would be or what the time to implement it
23 would be, correct?

24 A. Not in detail.

25 Q. As to the features in your list on

1 pages 5 to 7, and I mean to include all of the
2 Arabic 1 to 5 list, the whole list, you agree with me
3 that these features are critical to CRES providers;
4 is that right?

5 A. They are critical to the market and
6 fundamental and, again, as CRES providers, as market
7 participants, need customer data. Customer data is
8 fundamental to the competitive marketplace.

9 Q. On page 8, you are talking about some
10 other jurisdictions and what they have done, but is
11 it accurate that you are not aware of utilities in
12 Ohio have adopted the standard you're talking about
13 on page 8?

14 A. That's correct.

15 Q. And, again, as to those standards, you
16 have not done an analysis or performed a study with
17 regard to the cost of implementation of those; is
18 that right?

19 A. Correct.

20 Q. On page 9, line 21, you start a
21 discussion of additional commitments. Your phrase,
22 that you want -- let me ask you some questions about
23 that. You are aware that DP&L already has rate-ready
24 billing and bill-ready billing; is that right?

25 A. That's correct.

1 Q. So, essentially, you are recommending a
2 third type of billing when you recommend supplier
3 consolidated billing; is that right?

4 A. Well, in my testimony I actually
5 recommend a stakeholder process to discuss the
6 possibility of a third type but, yes, supplier
7 consolidated billing would be a third type beyond
8 rate-ready, utility rate-ready and utility bill-ready
9 consolidation.

10 Q. As to that, too, you have not done a cost
11 analysis; is that correct?

12 A. No.

13 Q. Yes, I'm correct?

14 A. I'm sorry. Yes, you are correct.

15 Q. You agree with me that you're aware that
16 DP&L currently has in place a viable bill-ready
17 billing system under which the CRES provider can
18 calculate its own charges and then send them to DP&L
19 to be included on a bill; is that right?

20 A. Yes. I am aware that DP&L has a
21 bill-ready billing system and in bill-ready it is
22 exactly as you described, the CRES provider can --
23 excuse me, can calculate the bill and provide it to
24 DP&L so that it's included on the customer bill;
25 however, that's usually just in a single line and

1 doesn't offer the ability to break out all of those
2 charges and all of the inputs that go into that
3 single line item bill that occur, that exists on the
4 customer's bill.

5 Q. Now, your third issue begins on page 10
6 and essentially that's a discussion of purchase of
7 receivables, correct?

8 A. Yes: Purchase of receivables and the
9 partial payment system.

10 Q. So you are proposing a purchase of
11 receivables program but without all of the details of
12 that program; is that right?

13 A. That's correct.

14 Q. So, for example, you told me at your
15 deposition, and again I'm going to try to shorten
16 this up, that you might want to take the bad debt
17 costs of the CRES providers and put them onto paying
18 customers across Ohio to, I think you used the term
19 "socialize" them; is that right?

20 A. I'd have to -- well, I'd have to look at
21 my deposition to recall exactly what I said. What I
22 recall from my deposition is that I talked about the
23 fact that POR programs quite frequently utilize
24 discount rates so that the bad debt risk associated
25 with serving those customers is actually borne by the

1 CRES provider themselves.

2 Q. Yes, we talked about that too. In other
3 words, you said in some jurisdictions a purchase of
4 receivables program actually transfers to the utility
5 the risk of nonpayment by having the utility purchase
6 receivables at a discount; is that what you're
7 talking about?

8 A. Yes.

9 Q. But that proposal is not in this
10 testimony, is it?

11 A. No.

12 Q. Another issue that -- with regard to
13 receivables that's not the subject of a
14 recommendation here is whether or not a CRES provider
15 is or is not to be allowed to assess a customer's
16 credit risk; is that right? There's not a
17 recommendation on that subject in your testimony?

18 A. That's correct.

19 Q. You're familiar with the fact that in
20 AEP's recent electric security plan case a purchase
21 of receivables program was pursued but the Commission
22 declined to order one; is that right?

23 A. Correct.

24 Q. And you participated in that case where
25 you were -- at the time when you were an employee of

1 one of the intervenors, Exelon, right?

2 A. That's correct.

3 Q. And you don't know of any differences
4 between the purchase of receivables program that RESA
5 is recommending in here versus the one recommended in
6 that case, do you?

7 A. No, I don't recall all the details of the
8 AEP case.

9 Q. On page 12 you are, line 6, sir, you're
10 talking about payment posting priorities.

11 A. Correct.

12 Q. You do realize that DP&L is following the
13 Commission's rules with regard to payment posting
14 priorities, right? Currently, that is.

15 A. Yes.

16 Q. You're also aware that the Commission has
17 begun a rulemaking proceeding which, among other
18 topics, would deal with how to allocate payments on a
19 consolidated bill, at least as between the utility
20 and CRES provider?

21 A. Yes.

22 Q. On page 12, line 9, you have a scenario,
23 it's the sentence that begins "The problem arises."
24 Again without reading all that to you, when you put
25 that testimony in, you were not aware at the time

1 that DP&L already sends weekly to each CRES provider
2 an update that shows customer account information,
3 the payment agreement plan, the date of the agreement
4 with the customer, the CRES provider's current
5 balance, and the CRES provider's arrearage; is that
6 right?

7 A. That's correct. I actually went off of
8 the most current alternative generation supplier
9 tariff, the PUCO No. 17 electric generation service
10 alternative generation supplier coordination tariff
11 for DP&L effective February 24th, 2012, and based
12 on what's in that tariff it did not indicate the
13 process you relayed to me in the deposition.

14 Q. But you told me that this was a
15 collaboration among RESA members. Isn't it true that
16 in the preparation of your testimony in that
17 collaboration the details of what DP&L actually
18 provides to CRES providers were not discussed with
19 RESA members currently operating in Ohio? Is that
20 right?

21 A. That's correct, because basically in our
22 estimation if the process is not institutionalized in
23 the tariff, then it's ephemeral, it can change
24 whimsically. So if that is the process that DP&L is
25 following, RESA would just simply like to see it

1 institutionalized in the tariff itself.

2 Q. At page 13 you discuss an alternative if
3 the Commission decides not to order a purchase of
4 receivables program; is that right?

5 A. Yes.

6 Q. And I believe it's line 15. You talk
7 about the Commission offering relief to the CRES
8 providers on these issues; is that right?

9 A. Correct.

10 Q. Without walking through that lengthy
11 answer, essentially what you are asking for in this
12 answer are specifics, again, in the alternative, but
13 specifics of benefits for the CRES providers?

14 A. So, again, and kind of throughout the
15 testimony, when we talk about efficiencies to the
16 market and things that improve the data information
17 that the CRES providers have, it is definitely a
18 benefit to the CRES providers but not exclusively.

19 So the idea that a CRES provider has all
20 of the information necessary to discuss the billing
21 details with the customer is also a benefit to the
22 customer. Is it a benefit to the CRES provider?
23 Yes, but not exclusively.

24 Q. Okay. Let's go to your issue 4, I think
25 that's page 14. The 20 cents per bill consolidated

1 bill charge, you don't know how much revenue is
2 produced by that, do you?

3 A. No, I do not.

4 Q. Nor do you know the costs that --

5 A. No, I don't.

6 Q. You say on lines 12 and 13 that "No other
7 Ohio EDU has a consolidated billing charge," but have
8 you examined what Duke does with regard to those
9 types of charges?

10 A. Yes. So subsequent to testimony I
11 reviewed the Duke tariff and indicated -- and found,
12 as I indicated earlier, that the tariff indicates
13 that they actually do have a charge for bill-ready
14 consolidated billing.

15 Q. Maybe to shorten this up, again, on
16 page 14, the answer to question 29, there are
17 different charges listed in that answer, and without
18 me reading all of them, it's accurate that you do not
19 know the costs that each of these charges cover; is
20 that right?

21 A. That's correct.

22 Q. And on page 15 in response to
23 question 30, you say that DP&L should "permit a
24 reasonable number of rate codes without additional
25 charge," but do you not have any details on that

1 suggestion; is that right?

2 A. Correct.

3 Q. On page 15 in answer to question 30 you
4 say that DP&L -- I'm sorry, this is the answer in
5 which you say that, or you recommend that DP&L
6 provide an authorized CRES provider with customer
7 interval data at no cost.

8 A. Correct.

9 Q. I'm pausing just to see if I can shorten
10 this.

11 In a nutshell, although you do not
12 advocate that there should be no cost recovery, you
13 don't have a recommendation about that beyond what's
14 stated in your testimony; is that right?

15 A. That's correct.

16 Q. Your fifth issue starts on page 15 --
17 actually, I'll withdraw that.

18 Why don't you go page 16, question 32.
19 Before you prepared your testimony for this case you
20 did not examine what the Commission did and what it
21 found with respect to the renewable generation
22 facility in DP&L's long-term forecast report case; is
23 that right?

24 A. That's correct.

25 Q. Would you agree with me that once the

1 generation facility is built, you cannot unbuild it?

2 A. I do.

3 Q. You told me, I believe, that you do not
4 understand the rationale for DP&L's switching
5 tracker; is that right?

6 A. I do not understand the rationale. My
7 recollection from the deposition is you asked me how
8 it was supposed to work and I indicated that I did
9 and that if switching exceeded current levels of
10 62 percent, that the difference in charges between an
11 SSO rate and the -- well, by a rate calculation, so I
12 believe in my deposition I said if the charge goes
13 beyond -- no, sorry, if the switching goes beyond the
14 current 62 percent rate, that a charge would be
15 assessed to shopping customers based on exceeding
16 that threshold.

17 Q. Maybe I can help. I'm drawing a
18 distinction between how the switching tracker works
19 on the one hand and the rationale for it on the
20 other. Isn't it true that you do not understand the
21 rationale of the proposal?

22 A. Well, if I answered -- if I answered that
23 way in the deposition, then I guess at the time I did
24 not.

25 Q. Do you today?

1 A. I feel I have a, at least a, I mean a
2 rough understanding that the rationale is that, you
3 know, switching increases, that the -- my
4 understanding is now that the SSR was based on
5 shopping rates as they are currently and that if
6 those rates increase, the SSR mechanism no longer --
7 DPL proposes that it no longer compensates them to
8 the level that they calculate it currently and so,
9 therefore, they need another mechanism to provide
10 further compensation.

11 Q. On the SSR, page 17, line 8, the end of
12 line 8 you have a sentence that says "RESA is not in
13 a position to indicate to the Commission the amount
14 of transition assistance DP&L should receive, but
15 such amount must be fair to both shopping and
16 nonshopping customers, and the amounts should not be
17 based on customers exercising their right to shop."
18 Do you see that reference?

19 A. Yes, I do.

20 Q. That reference is a reference to the
21 service stability rider, the SSR, right?

22 A. Yes.

23 Q. And it's accurate that RESA does not take
24 a position on the idea of an SSR or on the amount of
25 an SSR, correct?

1 A. Correct, we take a position on neither
2 point.

3 Q. For all of the various recommendations
4 that you are making here about competitive retail
5 enhancements, you have not tried to calculate or
6 estimate the costs of making any of those changes; is
7 that right?

8 A. No. There's no way for us to estimate
9 the costs of DP&L's system upgrades.

10 Q. So you don't have a cost-benefit
11 analysis, therefore, to offer to the Commission?

12 A. No, not that we -- that RESA has taken on
13 internally, no.

14 Q. As to cost recovery, however, of these
15 various recommendations, RESA's position is that it
16 is not asking DP&L's shareholders to bear the costs
17 of the retail market enhancements that would be
18 implemented by the utility; isn't that correct?

19 A. That is correct. We are not asking the
20 shareholders to bear that cost.

21 Q. And to try to put a finer point on the
22 cost allocation between CRES providers on the one
23 hand and customers on the other, RESA's position at
24 least is that it cannot be any more specific than
25 this: In some cases all customers benefit and should

1 bear the costs in RESA's view, while in other cases
2 it would be appropriate for the CRES provider to
3 provide direct cost recovery for the program. Is
4 that right?

5 A. At a high level, yes. It's -- RESA does
6 not believe that you can make a blanket statement
7 that any one particular program should be allocated
8 solely to the customer or solely to the CRES
9 provider. The details in these cases matter
10 immensely and it's a nuanced deliberation.

11 Q. I understand, Mr. Bennett. Thank you.

12 MR. FARUKI: Your Honors, that's all I
13 have.

14 EXAMINER PRICE: Mr. Margard?

15 MR. MARGARD: No questions. Thank you.

16 EXAMINER PRICE: Mr. Petricoff, redirect?

17 MR. PETRICOFF: Yes, your Honor.

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19 REDIRECT EXAMINATION

20 By Mr. Petricoff:

21 Q. Just a couple of questions. Mr. Bennett,
22 if you recall, Mr. Faruki asked you about your list
23 of EDI enhancements which are on page 5, line 18,
24 through page 6, line 6, and web-based enhancements or
25 web-based information that is on the lines on page 6

1 on lines 7 to 34.

2 How was this list put together, and what
3 is the advantage of this list?

4 A. So this list is the result of a
5 collaborative effort by RESA members to come up with
6 the minimum basic information that creates a viable
7 robust, efficient competitive retail market. So this
8 is a list of processes and data points that RESA
9 advocates in multiple jurisdictions, and the idea
10 behind it is if we can get standardization on this
11 level of data, it creates efficiency for the
12 customer, for the utility, for the CRES provider. It
13 allows CRES providers to serve customers across
14 jurisdictions, so businesses like franchises and
15 things that have -- businesses that have locations in
16 different utility territories can be served under the
17 same set of rules, procedures, and efficiencies.

18 And, again, it basically allows for
19 increased supplier entry, more efficient pricing,
20 less -- and less -- sorry, it's getting late, less
21 onerous tasks by the utility personnel to have to do
22 manual work-around and things of that nature, deal
23 with manual requests and things like that.

24 Q. Now I'd like to draw your attention to
25 page 8, question 17, Mr. Faruki asked you if those

1 EDI changes had been instituted in Ohio. Do you know
2 whether the EDI Ohio working group is looking at
3 these changes now?

4 A. I actually don't recall.

5 Q. Okay. That's fine.

6 And then in terms of -- in terms of --
7 I'm sorry. Mr. Faruki asked you a question
8 concerning the Duke tariff charges for consolidated
9 billing. Is there a Duke tariff charge for
10 rate-ready billing?

11 A. Not that I know of.

12 Q. Is there a charge by AEP or FirstEnergy,
13 any of the FirstEnergy companies for consolidated
14 billing?

15 A. Not that I'm aware of.

16 MR. PETRICOFF: No further questions.

17 Thank you.

18 EXAMINER PRICE: Mr. Berger?

19 MR. BERGER: Nothing further. Thank you.

20 EXAMINER PRICE: Mr. Williams?

21 MR. WILLIAMS: No questions, your Honor.

22 EXAMINER PRICE: Mr. Lang?

23 MR. LANG: No, thank you.

24 EXAMINER PRICE: Mr. Darr?

25 MR. DARR: No questions.

1 EXAMINER PRICE: Mr. Faruki?

2 MR. FARUKI: No, your Honor. Thank you.

3 EXAMINER PRICE: Mr. McKenney?

4 EXAMINER MCKENNEY: Nothing.

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6 EXAMINATION

7 By Examiner Price:

8 Q. I have a quick couple questions.

9 A. Okay.

10 Q. Are you aware that the charges for
11 consolidated billing were set according to a
12 stipulation approved by the Commission?

13 A. I was informed by counsel of that
14 recently.

15 Q. Do you have any testimony in your
16 prefiled testimony as to how circumstances have
17 changed in the market since the Commission approved
18 that stipulation?

19 A. Not in my prefiled testimony, no.

20 Q. Excellent.

21 Did you indicate that you had testified
22 in the AEP SSO case?

23 A. No. I was a supporting member of the
24 Exelon team that participated in that case, but I was
25 not a witness, no.

1 Q. You were aware of what was going on in
2 that case.

3 A. Yes.

4 Q. Okay. Were you aware of RESA's position
5 on the construction of the Turning Point facility?
6 Turning Point Solar generation facility.

7 A. Yeah, correct. I was a part of the
8 discussion; the details are a bit vague to me right
9 now.

10 Q. Can you tell the Bench whether RESA
11 supported or opposed the construction of the Turning
12 Point facility?

13 A. I'm sorry, I don't remember specifically
14 if they did or didn't.

15 Q. Okay. Let me just ask as a follow-up
16 just to be sure. You indicate on page 16, beginning
17 on line 22, that RESA's understanding of the intent
18 of a nonbypassable renewable rider is for the
19 recovery of new construction once the statutory
20 requirements are met; is that correct?

21 A. That's what my testimony says, yes.

22 Q. But in AEP, and we don't know whether or
23 not RESA opposed or supported it, but we can
24 certainly check on that later, in AEP Turning Point
25 would have been new construction; is that correct?

1 A. That was, that's my recollection, yes.

2 Q. Okay. And, lastly, are you aware of
3 whether, prior to the construction of Yankee RESA
4 members applied for and received force majeure
5 determinations for the implementation because there
6 was insufficient in-state solar renewable credits
7 available?

8 A. I have a recollection of reading some of
9 that in the trade press, but my company was not one
10 and I don't have any detailed recollection or
11 knowledge of that.

12 EXAMINER PRICE: Great. Thank you,
13 you're excused. Have a good flight.

14 Mr. Petricoff.

15 MR. PETRICOFF: Yes, your Honor, at this
16 point we'd like to move for admission into the record
17 of RESA Exhibit No. 6.

18 EXAMINER PRICE: Any opposition to the
19 admission of RESA Exhibit 6?

20 MR. FARUKI: No, your Honor.

21 EXAMINER PRICE: It will be admitted.

22 (EXHIBIT ADMITTED INTO EVIDENCE.)

23 MR. PETRICOFF: Also, your Honor, while
24 we're on the record I would like to thank counsel
25 for, in keeping with the NCAA things, doing the

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1 hurry-up offense here. It was greatly appreciated.

2 With that I will take my client to the airport.

3 MR. FARUKI: Mr. Petricoff is welcome.

4 EXAMINER PRICE: Thank you. Let's go off
5 the record at this time.

6 (Hearing adjourned at 6:47 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, March 28, 2013, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(71892-MDJ)

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Case No(s). 12-0426-EL-SSO, 12-0427-EL-ATA, 12-0428-EL-AAM, 12-0429-EL-WVR, 12-0672-EL-RDR

Summary: Transcript in the matter of The Dayton Power and Light Company hearing held on 03/28/13 - Volume IX electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.